"GOVERNMENT IN THE SUNSHINE"

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 10315 and H.R. 9868

TO PROVIDE THAT MEETINGS OF GOVERNMENT AGENCIES SHALL BE OPEN TO THE PUBLIC, AND FOR OTHER PURPOSES

NOVEMBER 6 AND 12, 1975

Printed for the use of the Committee on Government Operations

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GOVERNMENT IN THE SUNSHINE

THURSDAY, NOVEMBER 6, 1975

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 2247, Rayburn House Office Building, Hon. Bella S. Abzug (chairwoman of the subcommittee) presiding.

Present: Representatives Bella S. Abzug, Michael Harrington, Andrew Maguire, Anthony Moffett, and Sam Steiger.

Also present: Eric L. Hirschhorn, counsel.

Ms. ABZUG. The Subcommittee on Government Information and Individual Rights will come to order.

This morning we begin hearings on H.R. 10315, and H.R. 9868, providing for open meetings in the Federal Government and popularly known as "Government in the Sunshine" legislation. Without objection, we will include the text of these bills in the record.

[The bills, H.R. 10315 and H.R. 9868, follow:]

94TH CONGRESS
1ST SESSION

H. R. 10315

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 22, 1975

Ms. ABZUG (for herself and Mr. FASCELL) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government in the Sunshine Act".

SEC. 2. DECLARATION OF POLICY.—It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.

SEC. 3. Title 5, United States Code, is amended by adding after section 552a the following new section:

"§ 552b. Open meetings

"(a) For purposes of this section—

"(1) the term 'agency' means the Federal Election Commission and any agency, as defined in section 551(1) of this title, headed by a collegial body composed of two or more individual members, and includes any subdivision thereof composed of or including two or more members and authorized to act on behalf of the agency;

"(2) the term 'meeting' means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations concern the joint conduct or disposition of official agency business, but does not include deliberations solely for the purpose of taking an action required or permitted by this section; and

"(3) the term 'member' means an individual who belongs to a collegial body heading an agency and who is appointed to such position by the President with the advice and consent of the Senate.

"(b) Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

"(c) Except in a case where the agency finds that the public interest requires otherwise, (1) subsection (b) shall not apply to any portion of an agency meeting, and (2) the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency, or the subdivision thereof conducting the meeting, properly determines that such portion or portions of its meeting or the disclosure of such information, can be reasonably expected to—

"(1) disclose matters (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

"(2) relate solely to the agency's own internal personnel rules and practices;

"(3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

This paragraph shall not apply to any officer or employee of the United States or any branch, department, agency or establishment thereof with respect to his official duties or employment;

"(4) involve accusing any person of a crime, or formally censuring any person.

This paragraph shall not apply to any officer or employee of the United States or any branch, department, agency, or establishment thereof with respect to his official duties or employment;

"(5) disclose information contained in investigatory records compiled for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source, (E) in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, disclose confidential information furnished only by the confidential source, (F) disclose investigative techniques and procedures, or (G) endanger the life or physical safety of law enforcement personnel;

"(6) disclose trade secrets, or financial or commercial information obtained from any person, where such trade secrets or other information could not be obtained by the agency without a pledge of confidentiality, or

where such information must be withheld from the public in order to prevent substantial injury to the competitive position of the person to whom such information relates;

"(7) disclose information which must be withheld from the public in order to avoid premature disclosure of an action or a proposed action by—

"(A) an agency which regulates currencies, securities, commodities, or financial institutions where such disclosure would be likely to (i) lead to serious financial speculation in currencies, securities, or commodities, or (ii) seriously endanger the stability of any financial institution; and

"(B) any agency where such disclosure would be likely to seriously frustrate implementation of the proposed agency action.

This paragraph shall not apply in any instance where the content or nature of the proposed agency action already has been disclosed to the public, or where the agency is required by law to make such disclosure prior to taking final agency action on such proposal;

"(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

"(9) specifically concern the agency's participation in a civil action in Federal or State court, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title, or otherwise involving a determination on the record after opportunity for a hearing; or

"(10) disclose information required to be withheld from the public by any other statute establishing particular criteria or referring to particular types of information.

"(d) (1) Action under subsection (c) to close a portion or portions of an agency meeting shall be taken only when a majority of the entire membership of the agency, or of the subdivision thereof authorized to conduct the meeting on behalf of the agency, votes to take such action. A separate vote of the agency members, or the members of a subdivision thereof, shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as

each meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed. Whenever any person whose interests may be directly affected by a meeting requests that the agency close a portion or portions of the meeting to the public for any of the reasons referred to in paragraphs (3), (4), or (5) of subsection (c), the agency shall vote by recorded vote whether to close such meeting, upon request of any one of its members. Within one day of any vote taken pursuant to this paragraph, the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question.

"(2) If a meeting or portion thereof is closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) of this subsection, make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting, and their affiliation.

"(3) Any agency, a majority of whose meetings may properly be closed to the public, in whole or in part, pursuant to paragraphs (6), (7)(A), (8), or (9) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings, or portion of such meetings,

so long as a majority of the members of the agency, or of the subdivision thereof conducting the meeting, votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1) and (2) of this subsection, and subsection (e) shall not apply to any meeting to which such regulations apply: *Provided,* That the agency shall, except to the extent that the provisions of subsection (b) may apply, provide the public with public announcement of the date, place, and subject matter of the meeting at the earliest practicable opportunity and in no case later than the commencement of the meeting or portion in question.

"(e) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the date, place, and subject matter of the meeting, whether open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency, or of the members of the subdivision thereof conducting the meeting, determines by a recorded vote that agency business requires that such meetings be called at an earlier date, in which case the agency shall make public

announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable opportunity and in no case later than the commencement of the meeting or portion in question. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this paragraph if (1) a majority of the entire membership of the agency, or of the subdivision thereof conducting the meeting, determines by a recorded vote that agency business so requires, and that no earlier announcement of the change was possible, and (2) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable opportunity and in no case later than the commencement of the meeting or portion in question. Immediately following the public announcement required by this paragraph, notice of such announcement and the vote of each member upon such change shall also be submitted for prompt publication in the Federal Register.

"(f) A complete transcript or electronic recording adequate to record fully the proceedings shall be made of each meeting, or portion of a meeting, closed to the public, except for a meeting, or portion of a meeting, closed to the

public pursuant to paragraph (9) of subsection (c). The agency shall make promptly available to the public, in a place easily accessible to the public, the complete transcript or electronic recording of the discussion at such meeting of any item on the agenda, or of the testimony of any witness received at such meeting, except for such portion or portions of such discussion or testimony as the agency, by recorded vote taken subsequent to the meeting and promptly made available to the public, determines to contain information specified in paragraphs (1) through (10) of subsection (c). In place of each portion deleted from such a transcript or transcription the agency shall supply a written explanation of the reason for the deletion, the portion of subsection (c) and any other statute said to permit the deletion and a summary or paraphrase of the deleted portion. Such summary or paraphrase need not disclose information specified in paragraphs (1) through (10) of subsection (c). Copies of such transcript, or a transcription of such electronic recording disclosing the identity of each speaker, shall be furnished to any person at no greater than the actual cost of duplication or transcription or, if in the public interest, at no cost. The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public,

for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

"(g) Each agency subject to the requirements of this section shall, on or before the effective date of this Act, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section, and to require the promulgation of regulations that are in accord with such subsections.

"(h) The district courts of the United States have jurisdiction to enforce the requirements of subsections (b)

through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency or its members prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Before bringing such action, the plaintiff shall first notify the agency of his intent to do so, and allow the agency a reasonable period of time, not to exceed ten days, to correct any violation of this section, except that such reasonable period of time shall not be held to exceed two working days where notification of such violation is made prior to a meeting which the agency has voted to close. Such actions may be brought in the district wherein the plaintiff resides, or has his principal place of business, or where the agency in question has its headquarters. In such actions a defendant shall serve his answer within twenty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of a transcript or electronic recording of a meeting closed to the public, and may take such additional evidence as it deems necessary. The

court, having due regard for orderly administration and the public interest, as well as the interests of the party, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section, or ordering the agency to make available to the public the transcript or electronic recording of any portion of a meeting improperly closed to the public. Except to the extent provided in subsection (i) of this section, nothing in this section confers jurisdiction on any district court acting solely under this subsection to set aside or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

"(i) Any Federal court otherwise authorized by law to review agency action may, at the application of any person entitled to seek such review, inquire into violations by the agency of the requirements of this section and afford any such relief as it deems appropriate.

"(j) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g), (h), or (i) of this section, except that costs may be assessed against an individual member of an agency only in the case where the court finds such agency member has intentionally and repeatedly violated this section and

against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

"(k) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether paid by the agency or otherwise).

"(l) Except as specifically provided in this section, nothing herein confers any additional rights on any person, or limits the present right of any person, to inspect or copy, under section 552 of this title, any documents or other written material in the possession of any agency. In the case of any request made pursuant to section 552 of this title to copy or inspect the transcripts or electronic recordings described in subsection (f) of this section, the provisions of this Act shall govern whether such transcripts or recordings shall be made available in accordance with such request. The requirements of chapter 33 of title 44, United States Code, shall not

apply to the transcripts and electronic recordings described in subsection (f) of this section.

"(m) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting otherwise required by law to be open.

"(n) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts or electronic recordings required by this Act, which is otherwise accessible to such individual under section 552a of this title.".

SEC. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552b. Open meetings."

immediately below:

"552a. Records about individuals.".

SEC. 5. (a) Section 557 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) (1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(A) no person outside the agency shall make or cause to be made to any member of the body com-

prising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relative to the merits of the proceeding;

"(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or cause to be made to any person outside the agency an ex parte communication relative to the merits of the proceeding;

"(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes, a communication prohibited by this subsection shall place on the public record of the proceeding:

"(i) all such written communications;

"(ii) memoranda stating the substance of all such oral communications; and

"(iii) all written responses and memoranda stating the substance of all oral responses to the materials described in clauses (i) and (ii) of this subparagraph;

"(D) in the event of a communication prohibited by this subsection and made or caused to be made by a party, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the person or party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation;

"(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

"(2) This section does not constitute authority to withhold information from Congress.

"(3) Subparagraphs (A) and (B) of paragraph (1) are not intended to prohibit inquiries or responses relating solely to the procedural status of a matter pending before an agency: *Provided*, That any such inquiry or response shall be placed on the public record pursuant to subparagraph (C) of paragraph (1)."

(b) The second sentence of section 554(d) of title 5, United States Code, is amended to read as follows: "Such employee may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.".

(c) Section 551 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"; and

(3) by adding at the end thereof the following new paragraph:

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.".

(d) Section 556(d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient

grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.".

SEC. 6. The provisions of this Act shall become effective one hundred and eighty days after the date of its enactment.

94TH CONGRESS
1ST SESSION

H. R. 9868

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 1975

Mr. FASCELL (for himself and Ms. ABZUG) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Government in the Sunshine Act".

SEC. 2. DECLARATION OF POLICY.—It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information, while protecting the rights of indivduals and the ability of the Government to carry out its responsibilities.

SEC. 3. DEFINITIONS.—For purposes of this Act the term, "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency.

AGENCY PROCEDURES

SEC. 4. (a) This section applies, according to the provisions thereof, to the Federal Election Commission and to any agency, as defined in section 551 (1) of title 5, United States Code, where the collegial body comprising the agency consists of two or more individual members, at least a majority of whom are appointed to such position by the President with the advice and consent of the Senate. Except as provided in subsection (b), all meetings of such collegial body, or of a subdivision thereof authorized to take action on behalf of the agency, shall be open to the public. For purposes of this section, a meeting means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations concern the joint conduct or disposition of official agency business.

(b) Except where the agency finds that the public interest requires otherwise, (1) subsection (a) shall not apply to any agency meeting, or any portion of an agency meeting, or to any meeting, or any portion of a meeting, of a subdivision thereof authorized to take action on behalf of the agency, and, (2) the requirements of subsections (c) and

(d) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency, or the subdivision thereof conducting the meeting, properly determines that such portion or portions of its meeting, or such information, can be reasonably expected to—

(1) disclose matters (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) relate solely to the agency's own internal personnel rules and practices;

(3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(4) involve accusing any person of a crime, or formally censuring any person;

(5) disclose information contained in investigatory records compiled for law enforcement purposes, but only to the extent that the disclosure would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential

source, (E) in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, disclose confidential information furnished only by the confidential source, (F) disclose investigative techniques and procedures, or (G) endanger the life or physical safety of law enforcement personnel;

(6) disclose trade secrets, or financial or commercial information obtained from any person, where such trade secrets or other information could not be obtained by the agency without a pledge of confidentiality, or where such information must be withheld from the public in order to prevent substantial injury to the competitive position of the person to whom such information relates;

(7) disclose information which must be withheld from the public in order to avoid premature disclosure of an action or a proposed action by—

(A) an agency which regulates currencies, securities, commodities, or financial institutions where such disclosure would (i) lead to serious financial speculation in currencies, securities, or commodities, or (ii) seriously endanger the stability of any financial institution;

(B) any agency where such disclosure would seriously frustrate implementation of the proposed agency action, or private action contingent thereon; or

(C) any agency relating to the purchase by such agency of real property.

This paragraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) specifically concern the agency's participation in a civil action in Federal or State court, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of title 5, United States Code, or otherwise involving a determination on the record after opportunity for a hearing; or

(10) disclose information required to be withheld

from the public by any other statute establishing particular criteria or referring to particular types of information.

(c) (1) Action under subsection (b) shall be taken only when a majority of the entire membership of the agency, or of the subdivision thereof authorized to conduct the meeting on behalf of the agency, votes to take such action. A separate vote of the agency members, or the members of a subdivision thereof, shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (b), or with respect to any information which is proposed to be withheld under subsection (b). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters, and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed. Whenever any person whose interests may be directly affected by a meeting requests that the agency close a portion or portions of the meeting to the public for any of the reasons referred to in paragraphs (3), (4), or (5) of subsection (b), the agency shall vote whether to close such

meeting, upon request of any one of its members. Within one day of any vote taken pursuant to this paragraph, the agency shall make publicly available a written copy of such vote.

(2) If a meeting or portion thereof is closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) of this subsection, make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting, and their affiliation.

(3) Any agency, a majority of whose meetings will properly be closed to the public, in whole or in part, pursuant to paragraphs (6), (7)(A), (8), or (9) of subsection (b), or any combination thereof, may provide by regulation for the closing of such meetings, or portion of such meetings, so long as a majority of the members of the agency, or of the subdivision thereof conducting the meeting, votes at the beginning of such meeting, or portion thereof, to close the meeting, and a copy of such vote is made available to the public. The provisions of this subsection, and subsection (d), shall not apply to any meeting to which such regulations apply: *Provided,* That the agency shall, except to the extent that the provisions of subsection (b) may apply, provide the public with public announcement of the date, place, and subject matter of the meeting at the earliest practicable opportunity.

(d) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the date, place, and subject matter of the meeting, whether open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency, or of the members of the subdivision thereof conducting the meeting, determines by a vote that agency business requires that such meetings be called at an earlier date, in which case the agency shall make public announcement of the date, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable opportunity. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this paragraph if, (1) a majority of the entire membership of the agency, or of the subdivision thereof conducting the meeting, determines by a vote that agency business so requires, and that no earlier announcement of the change was possible, and, (2) the agency publicly announces such change at the earliest practicable opportunity. Immediately following the public announcement required by this paragraph, notice of such announcement shall also be submitted for publication in the Federal Register.

(c) A complete transcript or electronic recording adequate to fully record the proceedings shall be made of each meeting, or portion of a meeting, closed to the public, except for a meeting, or portion of a meeting, closed to the public pursuant to paragraph (9) of subsection (b). The agency shall make promptly available to the public, in a place easily accessible to the public, the complete transcript or electronic recording of the discussion at such meeting of any item on the agenda, or of the testimony of any witness received at such meeting, where no significant portion of such discussion or testimony contains any information specified in paragraphs (1) through (10) of subsection (b). Copies of such transcript, or a transcription of such electronic recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

(f) Each agency subject to the requirements of this section shall, within one hundred and eighty days after the en-

actment of this Act, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any persons, promulgate regulations to implement the requirements of subsections (a) through (e) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (a) through (e) of this section, and to require the promulgation of regulations that are in accord with such subsections.

(g) The district courts of the United States have jurisdiction to enforce the requirements of subsections (a) through (e) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency or its members prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section,

such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Before bringing such action, the plaintiff shall first notify the agency of his intent to do so, and allow the agency a reasonable period of time, not to exceed ten days, to correct any violation of this section, except that such reasonable period of time shall not be held to exceed two working days where notification of such violation is made prior to a meeting which the agency has voted to close. Such actions may be brought in the district wherein the plaintiff resides, or has his principal place of business, or where the agency in question has its headquarters. In such actions a defendant shall serve his answer within twenty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of a transcript or electronic recording of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the party, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section, or ordering the agency to make available to the public the transcript or electronic recording of any portion of a meeting improperly closed to the public. Except to the extent

provided in subsection (h) of this section, nothing in this section confers jurisdiction on any district court to set aside or invalidate any agency action taken or discussed at an agency meeting out of which the violation of this section arose.

(h) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section, and afford any such relief as it deems appropriate.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (f), (g), or (h) of this section. Costs may be assessed against an individual member of an agency only in the case where the court finds such agency member has intentionally and repeatedly violated this section, or against the plaintiff where the court finds that the suit was initiated by the plaintiff for frivolous or dilatory purposes. In the case of apportionment of costs against an agency, the costs may be assessed by the court against the United States.

(j) The agencies subject to the requirements of this section shall annually report to Congress regarding their

compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section.

SEC. 5. (a) Section 557 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

"(1) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

"(2) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to an interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

"(3) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes, a communication in violation of this subsection, shall place on the public record of the proceeding:

"(A) written communications transmitted in violation of this subsection;

"(B) memorandums stating the substance of all oral communications occurring in violation of this subsection; and

"(C) responses to the materials described in subparagraphs (A) and (B) of this subsection;

"(4) upon receipt of a communication knowingly made by a party, or which was knowingly caused to be made by a party in violation of this subsection; the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the person or party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by virtue of such violation;

"(5) the prohibitions of this subsection shall apply

at such time as the agency may designate, but in no case shall they apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply at the time of his acquisition of such knowledge.".

(b) The second sentence of section 554 (d) of title 5, United States Code, is amended to read as follows: "Such employee may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.".

(c) Section 551 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the "act." at the end of paragraph (13) and inserting in lieu thereof "act; and"

(3) by adding at the end thereof the following new paragraph:

"(14) 'ex parte communication' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.".

(d) Section 556 (d) of title 5, United States Code, is

amended by inserting between the third and fourth sentences thereof the following new sentence: "The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.".

SEC. 6. (a) Except as specifically provided by section 201, nothing in section 201 confers any additional rights on any person, or limits the present rights of any such person, to inspect or copy, under section 552 of title 5, United States Code, any documents or other written material within the possession of any agency. In the case of any request made pursuant to section 552 of title 5, United States Code, to copy or inspect the transcripts or electronic recordings described in section 201(e), the provisions of this Act shall govern whether such transcripts or electronic recordings shall be made available in accordance with such request. The requirements of chapter 33, of title 44, United States Code, shall not apply to the transcripts and electronic recordings described in section 201(e). This title does not authorize any information to be withheld from Congress.

(b) Nothing in section 201 authorizes any agency to withhold from any individual any record, including transcripts or electronic recordings required by this Act, which is otherwise accessible to that individual under section 552a of title 5, United States Code.

SEC. 7. The provisions of this title shall become effective one hundred and eighty days after the date on which this Act is enacted, except that the provisions of section 201 requiring the issuance of regulations to implement such section shall become effective upon enactment.

Ms. ABZUG. Bureaucrats in the various Federal agencies are relatively insulated from the common men and women in this country. As a result, they perhaps tend to forget that, in the words of Federalist No. 49, "the people are the only legitimate fountain of power, and it is from them that the constitutional charter . . . is derived."

Government is and should be the servant of the people, and it should be accountable to them for the actions which it supposedly takes on their behalf.

The enormous growth in both the size and the influence of the Federal Government in this century has brought with it a tendency for treating ordinary citizens as either the subjects or the antagonists of government instead of its masters.

A concomitant of this view has been the policy that the people need not and should not have access to the processes and activities of government.

People who want to exercise their democratic rights as citizens to find out what their government is doing are told that they would not understand, or that the matter is "under investigation," or that "national security," or "executive privilege," or something of the sort, makes it impossible or inadvisable for them to know.

This subcommittee and its predecessors have for many years been active in trying to break the seals of secrecy in the Federal Government.

The Freedom of Information Act, passed in 1966, and the Freedom of Information Act Amendments of 1974 came from this subcommittee. So did the Privacy Act of 1974, which dealt with the other side of the coin by limiting the uses to which the Government may put information about individuals.

These hearings will continue along that line. They will consider various legislative proposals that would require meetings in the Federal Government to be open to the public.

The specific issues we will look at will include:

Which departments and agencies should be covered by an open meeting law?

Should entities headed by a single individual be covered as well as those headed by collegial bodies?

How formal need a meeting be before it must be announced in advance and open to the general public?

Should there be exemptions from an openness rule, and if so, what should they be?

Under what circumstances, and at whose request, should there be judicial review of decisions to close meetings?

What remedies should be available when a meeting has been closed improperly?

We are scheduled to hear witnesses from the Congress, various Federal departments and agencies, the press, and the public. We are anxious to have their views on this complex and important subject, so that we may proceed in the near future to mark up and report effective and workable open meeting legislation.

As our leading witness and our leading proponent of "Government in the Sunshine" legislation, we have Congressman Dante Fascell, who is here before us. We are most anxious to hear the views of Mr. Fascell, who has been one person in this House who has been trying to get this type of legislation enacted for a long time. Hopefully, his bill will re-

ceive full consideration by our subcommittee and the full committee in this session of Congress.

Would you be good enough to proceed, Congressman Fascell.

STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. FASCELL. First of all, let me ask permission to include my prepared statement in the record, and then I will proceed extemporaneously if I may.

Ms. ABZUG. Without objection, so ordered.

Mr. FASCELL. Madam Chairwoman, let me thank you and the members of the subcommittee. I know we all have many places to go at the same time, but the continuation of hearings on this subject is very important, but also let me express my thanks to you and the members of this subcommittee for the work that you and the subcommittee have been doing, the dedication that you have exhibited in the legislation which you have passed and the numerous hearings you have held on matters under your jurisdiction.

I have some feelings for what you have been through, having served for 8 years on the predecessor subcommittee.

I think I have heard all of the arguments, and undoubtedly you have and will continue to, about all aspects of this problem.

In all of this work in which your subcommittee is involved, you are dealing with attitudes. That is difficult to deal with legislatively and yet it is a real factor. It is a very real factor.

I remember before the first Freedom of Information Act, when we had extensive hearings. We finally came down to one conclusion. That the principal inhibiting factor to open government was simply the dynamics of government. Bureaucracy grew up into a process whereby it was easier to take "protective action" or to take no action, or to be secret, than it was to be open.

That is all. There was no great conspiracy involved, it was just the dynamics of the situation.

There are exceptions, of course, with respect to specific actions or a coverup as we all know, but most of the time in the normal run of government as we understand it, it was simply the attitude and the dynamics of the situation.

When you seek to change that, you run into the same argument: "It is not going to work, it will destroy Government, and it will not operate this way" and so on ad infinitum.

Suffice it to say, we heard all of this when we accomplished the same process with respect to our own hearings in the Congress, both as to markup sessions and ordinary hearings.

Yet we have seen a remarkable change in Congress on the question of open hearings. We do not have 100-percent batting average, but we are so much better than we were several years ago that it is unbelievable.

I cannot see where Congress has fallen apart at all, and a great deal more action is now open instead of closed.

Finally we got the other body to screw up their courage and they did this yesterday. That is a healthy attitude. They are considering this very bill today as it applies to Federal agencies.

The concept is a very simple one. Obviously we believe that open government is good. It would help eliminate the skepticism, the distrust and the frustration that our people have. There is the image of the backroom and the smoke-filled room where everyone is pulling strings, and the guy on the end of the string with his neck in the noose is the average taxpayer.

Government is big and it is complex, and it renders a lot of service. It is very tough for the individual citizen in this country to have any direct contact with that situation.

Congressmen are the closest thing that a citizen can get to in Government. That is why a tremendous amount of our work is the dealing with constituent problems with the Federal Government.

The bill, as you know, deals only with those agencies having a body of two or more people appointed by the President and confirmed by the Senate. We are starting here. Frankly, I would like to see it go further, but from a practical aspect we have to start somewhere.

This is not a new bill. It has been around, and it has been reviewed in the academic community, by the agencies, by citizens groups and by the Congress.

Government agencies at first were almost unanimously opposed to the bill. Fortunately that has changed considerably.

The process has been a slow one, an educational one and an evolving one. The best we have been able to do so far is represented in the three bills before you. The original one in the House, H.R. 5075, was the same one as originally introduced in the Senate. Then, when it came out of the Senate committee with amendments, a comparable bill was introduced in the House, and that is H.R. 9868. Finally we have the last bill, H.R. 10315, which incorporates some changes recommended by the staff of this subcommittee.

We felt that all of those bills should be before you.

The exemptions are written in there to take care of all of the normal problems that we can think of: financial institutions, real estate, personal matters that should not be disclosed under certain conditions, and so on.

The best judgments of consensus have been put into the bill in terms of making the meetings open, providing the transcripts, and then providing exemptions to take care of those specific problems where it is reasonably felt there ought to be an exemption.

The other part of the bill deals with ex parte communication. I just want to say that the original concept came from a long study of the American Bar Association many years ago.

I first introduced that bill as a separate bill. The theory of it is incorporated in this bill too. Basically the idea is to reduce the question of conflict and undue influence on regulatory agencies which comes from outside sources.

If you have an adversary proceeding, everybody ought to be entitled through some measure, either notice or balloting or otherwise, that an ex parte communication has taken place.

I certainly do not want to eliminate—and I do not think the bill does—any reasonable effort to be informed or to participate. I do not see why Members of Congress, if they want to have some influence on regulatory agencies, should not get on the record. If that is what they want to do, then fine.

The ex parte communications raise and nurture the commonly held image that all regulatory agencies are dominated by those whom the agency is supposed to regulate.

The basic concept of this legislation is to open up some of the regulatory processes of government so that the public will be better informed and to remove as much as possible the negative inferences of the present closed procedure.

Probably most of those meetings are so boring that nobody would ever attend them anyway, so why not open them up and make the transcripts available and remove the cloud.

I am sure that business will proceed.

We could fine tune this bill forever. I am sure agencies will come up here and take it apart. They will say it is not practical, and the operation will cease, and they will not be able to make judgments, and so on.

Some of it may be legitimate but most of it is overblown fear, but we have to start somewhere.

This bill under your consideration will be carefully reviewed. It has been carefully reviewed in the other body.

Everybody has had a chance to look at it for a good many years.

We certainly make no claim that every agency is going to operate 100 percent with this. Of course you will have problems.

We will take care of those problems, however, in the best way we can. We had the same kind of problem with the Freedom of Information Act, as you know, Madam Chairwoman.

I am convinced that what we need to do is to get people in the agencies—and most of them want to do it, but they are not quite sure how to grapple with it—that is, give them the legislative base so that they can begin an attitude change which will lead to procedural change. Once that happens, I am sure everybody will fall into the process and make it work properly.

That is basically all I have to say, Madam Chairwoman, except to close by thanking you and the members of the subcommittee for giving me the opportunity to testify, and for taking the time to hear me on this important bill.

I know this subcommittee has been extremely busy. I want to thank you for scheduling these hearings, and to agree to move this bill.

Ms. ABZUG. Thank you, Congressman Fascell.

We very much appreciate your leadership here, as I indicated in my opening statement.

[Mr. Fascell's prepared statement follows:]

PREPARED STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Madam Chairman and members of the subcommittee, I am delighted to have this opportunity to speak on behalf of the Government in the Sunshine Act.

I commend the Subcommittee for taking up this legislation to open the deliberations of Executive Branch agencies to the public. Secrecy in government must be eliminated. The confidence of the American people in their government, which recently declined to a record low, must be restored.

There is no better way to assure the people of this nation that their government is working faithfully on their behalf, than through opening the process of government to full public scrutiny. That is the purpose of the legislation before you.

On March 19, 1975, I introduced H.R. 5075 to provide that meetings of governmental agencies shall be open to the public. Subsequently, identical bills were introduced with 38 co-sponsors. A counterpart bill, S. 5, was introduced in the Senate.

On July 31, 1975, an amended version of S. 5 was reported unanimously by the Senate Committee on Government Operations, and that bill has been pending action by the full Senate. H.R. 9868, a bill containing the language on open Executive Branch agency meetings that had been approved by the Senate committee, was introduced on September 26 by Ms. Abzug and me. Finally H.R. 10315, a bill further refining the Senate committee language, was introduced by Ms. Abzug, and I joined in cosponsoring this measure.

These are the measures before the Subcommittee. I urge you to consider the provisions of this legislation most carefully and to approve a bill that will be effective in achieving the objectives of those who favor open government.

Very few people would argue with the principle of government in the sunshine. Actually, this is the cornerstone of our democracy. Without public access to information on governmental actions, there can be no adequate basis on which individual citizens can form judgments and cast their votes for those who exercise the functions of government.

To the extent that secrecy exists in government, I believe that by and large it is the product of inertia and the following of what seems at first glance to be the easiest expedient that of withholding information from the public. After all, if the public does not know what happened or what has been done, it cannot fault the officials who are responsible for such actions. Thus, the officials involved may feel they can be safely immune from criticism if the results are not favorable.

Yet, in the long run, such secrecy causes more problems than it solves. Eventually, the truth usually leaks out, and when this happens after-the-fact, it breeds public distrust and condemnation which may be directed against officials other than those responsible for any misdeeds. The whole government suffers when our people perceive that it is working secretly against them.

What we need is a means to shatter the complacency of officials who needlessly follow practices of secrecy and make it so difficult to operate in such a manner that a policy of open government becomes the easy way out. Then we will have true "government in the sunshine" as officials learn that opening the decision-making process to the public is not only harmless, but salubrious.

In seeking to open the conduct of public business by Federal agencies, we in the Congress are asking no more than we have already imposed on ourselves. In 1973, the House adopted legislation which I co-sponsored amending the rules to strengthen the requirement for open hearings and open committee meetings including meetings for the markup of legislation. Prior to that action, 56 percent of House hearings and meetings were open to the public in 1972. In contrast, under the stronger open meetings rule adopted in the 93rd Congress, 92 percent of all House committee hearings and markup sessions were open to the public in 1974.

I have seen no drastic adverse consequences as a result of the new Congressional open meetings policy. Instead, the legislative output has been stepped up, and we can point with pride to the fact that any member of the public can find out virtually all he wants to know about Congressional actions, if not more than he wants to know.

The legislation before you would take similar action with respect to Federal agency meetings. Some 47 agencies headed by more than one governing member, who were appointed by the President subject to Senate confirmation, come under its provisions according to the Senate report accompanying S. 5. These include such agencies as the Civil Aeronautics Board, the Federal Communications Commission, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Securities and Exchange Commission, and others.

H.R. 10315 sets forth the policy that "the public is entitled to the fullest practicable information regarding the decision-making processes of the Federal government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the government to carry out its responsibilities."

Section 3 of the bill provides that every portion of every meeting of a Federal agency shall be open to the public. It defines "meeting" and also lists exceptions to the general rule requiring open meetings.

The same section specifies procedures by which an agency may vote to close a meeting under the exemptions, and requires that a complete transcript or record-

ing—which may have portions deleted by public vote of the agency members—be made available to the public in cases where closed meetings are held. Agencies are required to implement the Act by regulation and the United States District Courts are given jurisdiction to enforce its provisions. Provision is also made for annual reports to Congress on agency compliance with the Act.

Section 5 of the bill deals with *ex parte* contacts and bans communications with agencies by outside parties, or vice-versa, in connection with agency proceedings except as authorized by law.

In general, I believe this approach offers an effective and workable means of achieving open government. There is considerable room for discussion of the various detailed provisions of these sections, but I feel that the goal should be to close potential loopholes and assure that undue secrecy is prohibited.

The bill recognizes that in some cases, it may be necessary to close agency meetings, or portions of such meetings, to the public. The ten exceptions to the general openness policy, as listed in Section 3(c), are an attempt to protect the rights of individuals to privacy and to maintain the ability of the government to carry out its responsibilities in instances where public disclosure would conflict. My intent is that these be interpreted strictly, and the presumption should be that in any case where the language is construed as ambiguous, a meeting must be open.

With respect to the provisions of Section 3 requiring transcripts of closed meetings, I recommend that consideration be given to requiring these of open meetings as well. Apparently, the cost has been a factor in removing the requirement for open meetings. I strongly support the maintenance of a public record of what went on in closed meetings, but believe that such a record would be valuable also for open meetings.

I also strongly support the provision regarding *ex parte* communications.

H.R. 10315 is consistent with the Privacy Act recently enacted by Congress and seeks to protect the rights of individuals so that undue disclosure is not made by opening agency meetings. It also preserves all existing rights of the public and the Congress to agency information. It permits inquiries on the status of proceedings to be made without violating the *ex parte* contact provisions, although I would recommend that such status inquiries be permitted only to an agency clerk or other administrative official who does not participate in the decision-making process.

Madam Chairman, the government exists for the people of this country. The government's business is their business, and it must be conducted in full public view. The "Government in the Sunshine Act" should be enacted so that business will be conducted openly, and confidence in the integrity of the government will be restored.

Thank you.

Ms. ABZUG. One of the things that interests me about the bill, or the propositions in the various bills before the subcommittee, is, as you pointed out in your remarks, the parallel that it has in terms of the present criticism or opposition to opening up our committee hearings and markup sessions here in the House.

The big point that many of the critics raised was that grandstanding and a lack of frankness and openness would occur.

Do you find that the criticisms with respect to opening up executive branch hearings are the same? Would you indicate to us what you feel are criticisms that may be different and how you react to them?

Mr. FASCELL. My only reaction is based on the experience on the committee on which Mr. Harrington and I serve, that is the International Relations Committee where we just fell into the pattern. Everything was closed. It was all national security stuff. It changed practically overnight to open sessions for the largest part, particularly on markups.

The fear was that you would not have an open, frank discussion and that everybody would be grandstanding for the camera.

There is a little bit of that going on all the time. But it has not affected adversely any of our markups. Our markups, in my judgment, have been just as open and direct—maybe even more so—and I have

seen nothing that would inhibit any member with respect to matters in the markups.

They are sensitive in many respects, and they do deal with national security problems in some areas, and in the markups I have not detected any adverse reaction. As a matter of fact we have better attendance and there are people in the audience. Sometimes the press shows up.

When we are working on a particularly interesting subject the press does show up, it is far better.

Also we have the fine practice of having the administration representative there during the markup. When we discuss an amendment and want to get immediate reaction, the administration representative is right there, has heard the testimony, and can give the administration position and he does so in public.

This is far better than the old system. Administration representatives were not permitted to hear the testimony and gave their views in closed meetings.

As far as secrets were concerned, we all know there are no secrets in politics. You could not vote on a single issue that in a minute would not be on the wire service. That's why I offered the amendment to the rules making all votes in the committee public. Now it is just a lot better situation. It is cleaner, and I think it has improved us immensely.

I am delighted to see that the Senate has agreed to the Open Conference provision which we have already adopted on the House side.

Ms. ABZUG. What about the argument that opening up the agency meetings will only attract a roomful of lobbyists?

Would their presence inhibit the agencies' work?

Mr. FASCELL. It has not affected our committees' work. That is possible, but I would rather see the lobbyists in the open room easily identified where everybody can see them, rather than stalking around the hallways, skulking through offices to find out about secrets and giving rise to all of the imaginary ills that surround lobbyists.

I start out with the proposition that not all lobbyists are bad. Every economic interest is entitled to be represented and to be heard.

Why not have them there? What is so bad about it? They are also entitled to know what's going on.

I do not see any problem.

Ms. ABZUG. I have heard many complaints that indeed it is only the lobbyists that do get a forehand knowledge by leak or intuition of what an agency is doing. So this would, for the first time, be an opportunity for the nonlobbyists to know what is going on.

Mr. FASCELL. Absolutely.

I would not like to make a flat assertion, but I would say that there is not an adjudication or a rulemaking in a regulatory agency that the people who are affected do not know about.

Ms. ABZUG. I think this would have the opposite effect. Mr. Harrington.

Mr. HARRINGTON. Thank you, Madam Chairwoman.

First my apologies for being late.

Mr. FASCELL. No need to apologize, but I am delighted that you are here to make the meeting possible.

Mr. HARRINGTON. In reference to what I think is the crucial point which you addressed earlier, I would like to start by saying that I

could not agree more about the mood of the country, whether evidenced in Senator Humphrey's committee last week, or in the evidence 2 days ago. One thing that we might do as a positive rejoinder to what has happened to us over the last 12 or 14 years would be to make the process conform better to what people expect from Government and Congress. It may provoke conflict, but at least we can be different from the societies we condemn.

I think the legislation before us would be a substantial step in the right direction.

Mr. FASCELL. Mr. Harrington, I might say that I admire your courage and conviction. A lot of people might disagree with you on your personal efforts to make information public.

But I think there can be no disagreement on the principle involved and I have supported your legislative efforts in the International Relations Committee to make more information available.

Mr. HARRINGTON. I only wish that your statement was reflective of members of both the Armed Services and Ethics Committee.

The thing that bothers me most, I find difficult to conceive of as being dealt with in legislation.

Perhaps, based on your experience you can address this.

I have watched a war that began in secret and almost ended the same way, thanks to efforts made during the spring of this year to conduct hearings on Cambodian aid in executive session.

I have watched as recently as last Friday the Secretary of State, who joins us in a few minutes, make it very clear to the Pike committee that he did not intend to deal in public with the material that I think goes to the root of the disarray that surrounds our Government.

What I am bothered by is that I think there are many easy areas where this openness, whether executive inspired or congressionally applied, can be dealt with readily.

Very often when we get to the "crucial phase"—and that is a subjectively used phrase—we often find ourselves willing, compliant at least, to revert to the old process. I am asking you just to consider what we should do over a long period of time, maybe even generations, and second, not just to deal on the legislative side, which is useful, but to give serious attention to the executive, which has committed far more abuses.

We should not accept national security claims or any other reasons that are given as a rationale for not having the American public understand that the Government is giving mere lip service to the notion that we can conduct an open society.

I'm not even sure that we could not do that without legislation if the will to do so existed. Senator Church is confronted with the same problem dealing with actions affecting other countries.

What I am getting at, I guess, is that I often see the willingness to say "Yes, things have changed." But I wonder how much things have changed in the crucial areas, which is what the public is concerned about.

We can deal with all sorts of trivia and deal with things that are not essential, things that attract little audience or attention, but when the big issues surface, and the ones that have been most debilitating as far as our society is concerned, we very often see a willingness to accede to the adamance of the executive, as if they would not conduct busi-

ness with us or among themselves in any way other than the old-fashioned way.

I do not think you can legislate that. I do not think you can give will or force or initiative where it should be.

Do you have any thoughts on this?

Mr. FASCELL. You have articulated a pressing problem on the whole question of openness in Government. I do not have a single answer or maybe I simply do not have an answer. But what you say is very real, and it is something to which the Congress and the American people must address themselves to constantly.

I think that is the key word. There is no magic turnaround. The confrontation between the executive and the legislative branch over this issue is constant. We can legislate and close the gaps as we do with the various bills that come out of this subcommittee. But eventually you get to the kind of issues of dealing with war or national security and decisionmaking in the White House, where the Executive, for whatever reason, simply takes a strong position on not making certain information available.

How the Congress deals with that—and we have seen many examples of it—is very difficult.

Most of the releases of information in those cases, as I have seen it, has been because of constant pressure and public awareness, and then ultimately some arrangement or agreement.

Maybe none of it is satisfactory.

I have a quick example. I was involved many years ago in a Department of Defense investigation on behalf of a congressional committee. DOD just shut the doors and would not let us see anything.

The Comptroller General, who was helping us with this investigation, was denied access to all the documents dealing with the subject matter. We kept pressing and pressing, and finally we got an actual written agreement.

It was a memorandum of understanding between the Comptroller General and the particular agency within the Defense Department to make those documents available so that the GAO, on behalf of the Congress, could do a reasonable job in auditing the management practices and the other matters that were involved.

That is one example.

We have a more current one right now. In my subcommittee I have a resolution of inquiry which is pending, with respect to the Mayaguez incident.

Mr. HARRINGTON. I am familiar with that.

Mr. FASCELL. We have received excellent cooperation with the Department of Defense. It did not start out that way. We got no cooperation from anybody. But finally, through various meetings and persuasions, the Department of Defense came forward.

I cannot say that yet for any of the matters that are within the National Security Council. The executive just takes the position that those matters are involved in the decisionmaking process, and thus far has refused to make the information available. Whoever is the head of it may change his mind, but the old head of it was not about to make any of those documents, which would deal with the decisionmaking process, available to the GAO who was conducting the study on behalf of the committee.

So, what am I saying? Getting information from the executive is a day-to-day struggle. The confrontation is constant. We may deal with a piece of it by legislation. We may deal with a piece of it through confrontation which the media picks up and gives us some help. We may get some people fired. We may change attitudes.

So, I see it as a constant process.

But I see the whole process, in answer to the question which you have raised, which is the heart of the matter, as involving the American people.

It is a constant awareness and education problem. Step by step and drop by drop.

Mr. HARRINGTON. I do not think we disagree on the desired end. We might disagree on the drip-drop approach.

Mr. FASCELL. It is frustrating I know.

Mr. HARRINGTON. If we are not going to be viewed with bemused indifference, as irrelevant, then at some point the coequality ought to mean that. It ought not to be looked at as a War of the Roses.

Mr. FASCELL. Mr. Harrington, I agree.

There is not any information within the executive that the Congress should not have in order to perform its functions.

Mr. HARRINGTON. That is what I am getting at. I think we are our own worst enemy in attempting to say, in a deferential manner that should have been shed a long time ago, that this should be the prevailing standard. If we cannot affect what they do on a day-to-day basis, then we only encourage the kind of adamance that you charitably referred to in some of the relationships you have had to deal with this year.

That is why I do not prefer legislation as much as a reassertion of congressional will.

I think the legislation is useful, do not misunderstand me, but I think we could do an awful lot for their problem and ours in this area of forcing out information if we just confronted them more.

Mr. FASCELL. A lot of legislation has amendments in it now which do affect that problem and I think there is a legislative answer to this.

We just have not addressed it to every single piece of legislation or to a general piece of legislation that would affect all agencies of government, including the Office of the Presidency itself.

That might give rise to a constitutional confrontation which ultimately would have to be resolved one way or another.

I agree with you that it is ridiculous for us to be in the sole position that if we have a confrontation with the Executive, we either have to bring the Government to its knees by denying it all moneys, or you have to impeach the President, because you do not think he has done right under the Constitution.

That is the ultimate in the approach that we have in terms of a confrontation, unless we agree to go to the day-by-day resolution of the confrontation.

Madam Chairwoman, I would like to stay, but I need to get to my other committee where we are working up a bill.

Mr. HARRINGTON. I am sorry to have taken so much time.

Ms. ABZUG. Mr. Moffett, did you want to ask a question?

Mr. MOFFETT. Are you going to the committee with a resolution of inquiry?

Mr. FASCELL. This meeting today is on the whole military assistance program.

Mr. MOFFETT. I was going to say, if it is a resolution of inquiry I would speed you out.

But we thank you for being here, and we appreciate your coming.

Mr. FASCELL. Thank you.

Madam Chairwoman, thank you very much. I am sorry I have to run.

Ms. ABZUG. We will have you back later, I hope.

I now call Mr. Richard O. Simpson, Chairman of the U.S. Consumer Product Safety Commission.

[The witness was duly sworn.]

Ms. ABZUG. In the interests of time as well as the convenience of the subcommittee and the other witnesses, if you would like to insert your testimony into the record and summarize orally, we would prefer that you proceed that way.

STATEMENT OF RICHARD O. SIMPSON, CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY COMMISSION

Mr. SIMPSON. I would be pleased to do that.

Ms. ABZUG. Without objection, your full statement will be inserted in the record.

Mr. SIMPSON. Madam Chairwoman, the Consumer Product Safety Commission was created at a time when credibility in Government was probably at an alltime low. The common theme that was heard around Washington was that all regulatory agencies either were or would soon become captive of the industries they regulate.

Our Commission sat down and consciously decided to take steps to revise that perception, based on the very fundamental concept that you cannot effectively twist arms if it has to be done in broad daylight.

So, our Commission wrote, formally published, and has been following an openness meetings policy for over 2 years now, that I believe is much broader than the concept embodied in your legislation.

Ms. ABZUG. Did you say broader than contemplated by this legislation?

Mr. SIMPSON. Much, much, broader. In fact, I think that your legislation misses the mark, as I see it.

Ms. ABZUG. I would be very happy to hear you tell us how.

Mr. SIMPSON. First of all, I think that the legislation should deal with all regulatory agencies, and not only those that have multiple heads or collegial bodies.

The other thing is that I think the principal problem about which we have heard and which our policy was designed to deal with is these contacts between agency officials and outside parties.

In our agency our meetings policy applies to all employees of the agency, regardless of grade, who may have anything more than a minimal effect on an outcome.

It applies to all employees, including myself and the other Commissioners. It applies to all meetings, and they must be published and noted in advance on a public calendar.

Virtually all of our meetings are open for the public to attend. We keep logs of all of the meetings, and all the logs are also available to the public.

The only meeting in our Commission that would be affected by this legislation is the executive session which, by our definition, includes only the five Commissioners. No staff, and no outside parties.

A majority of our Commission is opposed to opening those sessions. I think you would find reasons stated by others. They feel it might have marginal utility and they feel it may inhibit at least one opportunity among the five of us to have a free exchange of ideas.

But the kinds of meetings that Congressman Fascell touched on—that is, those where a lobbyist or a representative of a special interest meets with anyone in the Commission who has an input in the decision-making process by our definition—are all open meetings.

If you deal only with the meetings of the collegial body, and require only those to open, then you are far short of the mark in my opinion.

That is the gist of it. We would support the ex parte communications provision. We certainly support the declaration of policy that secrecy in the Government should be abolished. We have been living by that for over 2 years, and we find it does not inhibit conversation and the free exchange of ideas.

Ms. ABZUG. Do your regulations include the procedures whereby you do business?

Mr. SIMPSON. Yes, I would be glad to provide those. I have brought with me a copy of our meetings policy. This is the latest revision of it as published in the Federal Register, and this is a copy of the latest public calendar whereby we give advance notice of meetings. The calendar covers a 2-week period, and lists some 46 meetings.

Ms. ABZUG. Without objection, those documents will be put into the record.

[Mr. Simpson's prepared statement and documents follow:]

PREPARED STATEMENT OF RICHARD O. SIMPSON, CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY COMMISSION

Madam Chairwoman:

I am pleased to appear before this Subcommittee today, to discuss "openness in government," and to describe how and why the Consumer Product Safety Commission voluntarily arrived at its approach to "sunshine" in regulatory life.

Our job at the Consumer Product Safety Commission is to reduce the unreasonable risks of injury to consumers from consumer products. As a Commission, we recognized at the beginning that much of our success would depend upon whether the public had confidence in what we said and what we attempted to do.

It is certainly no secret that public confidence in all levels of government and business is at or near an all time low. People today are not only skeptical of government, they have reached a point at which they often question the basic motivations of public officials, whether elected or appointed. As a Commission, we recognized that there is always the danger of any regulatory agency being "captured" by the special interest it was created to "regulate" or

by those it was created to "protect." Who has not heard the charge that "such-and-such" a Federal regulatory agency is a captive of industry? And whether those charges are true or false, I believe it is terribly naive to simply ignore the fact of life that appearances may often be as damaging as reality.

We determined--at the outset--that we would do everything within our power to avoid even the appearance that the Consumer Product Safety Commission could become or was a captive of any special interest group. We established formal policies to eliminate as far as possible those situations in which the public--rightly or wrongly--could conclude that there had been "arm-twisting" by outside parties in the determination of any given issue. In short, we recognized that it is next to impossible to effectively "twist" arms in broad daylight, and next to impossible to curry special favors unless there is secrecy.

In October 1973, just a few months after its activation, the Commission published a basic Procedural Policy on Meetings, Prior Public Notice, and Records of Proceedings. In October 1974, the Commission solicited public comment on a proposed and interim meetings policy, and, on November 4 of this year, published a clarified final policy. This policy, which I believe is unique, requires Commission

employees, including Commissioners, not only to keep records of meetings with outside parties, but to announce these meetings in advance, and to open the meetings to the public. Under this policy, we use both the Federal Register and the Commission's Public Calendar to provide advance public notice of meetings. The Public Calendar, which at the time was, and which I believe still is, unique, lists meetings at least two weeks in advance, and is mailed weekly without cost to any interested person.

Except under specific and limited conditions, Commission employees are expected to provide seven days advance notice in the Public Calendar for all meetings involving substantial interest matters. Only for bona fide emergency meetings does the policy authorize waiver of the seven days advance notice.

Virtually all meetings involving Commission employees are open to the public. The policy generally allows closing of only those meetings, or portions of meetings, at which proprietary data might be compromised. Closing of other meetings can be authorized only by a majority vote of the Commissioners.

Within twenty days following the scheduled meeting date, the person holding or attending the meeting must file either a meeting summary or notice of cancellation with the

Office of the Secretary. These summaries, which are sometimes verbatim transcripts, are available for public view in the Commission's public reading room.

The policy also requires summaries of telephone conversations on substantial interest matters; further, the policy requires that employees exercise discretion in telephone conversations, to the point of terminating the conversation and suggesting a meeting at a future date, or a letter, if a meeting is not possible.

I believe that the Commission's policy on meetings is a strong policy and that it is working.

The Commission has further confirmed its openness policy by providing for the fullest possible disclosure of information to the public under the Freedom of Information Act. Information which may, within the discretion of the agency, be exempted from disclosure under the Freedom of Information Act is available to the public unless the Commission determines that disclosure is not in the public interest.

I want to add that we are aware of the expressed concerns the Commission's "goldfish bowl" policies are causing industry--especially the members of the legal community. We recognize the concerns about "adverse publicity" and we are quite aware of our responsibilities in that regard.

The public today is better educated, more aware, and certainly more skeptical than at any time in our nation's history. While rules on "openness" are not always easy to live with, our experience shows that the difficulties perceived are over-estimated and become trivial when compared to the benefits of increased public confidence. Public confidence is a rare commodity which is worth considerable inconvenience.

Madam Chairwoman, the Commission supports the "Declaration of Policy," described in Section 2 of both H.R. 10315 and H.R. 9868, that the public is entitled to the fullest practicable information regarding the decision making processes of the Federal Government. The Commission also concurs with the ex parte communications provisions of the bills. However, the Commission majority believes that its own policy of opening meetings with outside parties and Commission employees, and information disclosure, would better accomplish the purpose described in the declaration.

That section of the bill, which provides for open agency meetings, would be applicable only to those agencies headed by two or more commissioners or similar officials appointed by the President with the advice and consent of the Senate. This would exclude most of the regulatory bodies within the executive departments and would generally only deal with the independent agencies. The Commission recommends

that any "openness" legislation be applicable to all regulatory bodies, regardless of executive structure, whose actions have more than minimal effect on the public.

The Commission's meetings policy provides for closed executive sessions (those attended solely by Commissioners). Agendas for these sessions are available in advance. Formal minutes of those sessions are prepared to indicate policy or regulatory decisions made and the basis therefor. Majority, concurring, or dissenting opinions are filed and available for public inspection along with the minutes of the executive sessions.

The Commission has examined and will continue to examine arguments for and against opening executive sessions. For example, it has been suggested that the deliberation at the final stage of decision-making is the most significant portion of the overall decision making process and indicates the actual considerations underlying a final agency action. It is further suggested that providing access to such deliberations would guarantee genuine "openness."

On the other hand, the need to schedule and announce ahead of time any meeting of a quorum of Commissioners at which an item of official business was to be discussed (even though not for the immediate purpose of making a decision) could aggravate an already widely alleged problem--the length of time to reach decisions. If all factual

materials available to Commissioners in informing themselves on issues were to be publicly available, as it is in this Commission, it might be that making the executive sessions themselves open to the public would have only marginal value and might, in fact, be counterproductive.

In the Commission's opinion, government-wide implementation of "openness" policies with respect to information disclosure and meetings between outside interests and agency officials or staff would be more consistent with the bill's Declaration of Policy. Such implementation would provide broader access and disclosure and would thereby afford the public a more complete view of federal agency decision making processes.

As I stated earlier, the Commission's meetings policy provides that virtually all meetings between Commission personnel and outside parties be open to the public, with the exception of those involving trade secrets or proprietary information. Meetings involving "matters of substantial interest" before the Commission must be publicized in the Commission's "Public Calendar" in advance of the scheduled meeting date. Logs must be kept and made available to the public. Anyone with more than a minimal role in the decision-making process is subject to the recording provisions.

In summary, the Commission supports government-wide implementation of "openness" policies with respect to meetings with outside parties and information disclosure. The Commission believes, at this time, that such policies would protect the public from secrecy without unduly hampering the decision-making process. The Commission majority believes that the implementation of such policies would make the opening of the executive session meetings unnecessary.

I appreciate this opportunity to comment on this legislation and would be delighted to answer any questions you may have.

PUBLIC CALENDAR

CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

VOLUME III, NO. 18
WEEKS OF NOVEMBER 2-8
AND NOVEMBER 9-15, 1975
PUBLISHED OCTOBER 31, 1975

ADDRESSES AND PHONE NUMBERS: Many of the meetings listed in the Calendar are held at the Commission's headquarters offices: 1750 K Street, N.W., Washington, D.C. and the Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland. Because times and places for meetings change, and because some meeting rooms are small, we suggest that persons interested in attending meetings listed in the Calendar call to confirm the details at least one day in advance. Contact persons and phone numbers are listed for most meetings.

MEETING LOGS: Under the Commission's proposed amended and interim meetings policy, staff persons who hold or attend a meeting involving "substantial interest matters" are required to file either a meeting summary or a notice of cancellation within twenty days. The Office of the Secretary maintains a chronological file of these summaries for review and copying in its public reading room, Room 1025, 1750 K Street, N.W., Washington, D.C. In addition, copies of specific meeting summaries are available by writing to the Office of the Secretary.

CONTENTS OF THIS ISSUE

Regular Monday Noon Meeting. Between Commissioners and interested members of the press, an informal on-the-record discussion of CPSC matters; Sixth Floor Hearing Room, 1750 K Street, N.W., Washington, D.C. These meetings are open to the public. For additional information, contact the Office of Public Affairs; (202) 634-7780.

NEISS Briefing: Held every other Thursday at 2 p.m., these slide-illustrated briefings on the National Electronic Injury Surveillance System (NEISS) are presented by the Bureau of Epidemiology in Room 802 Westwood Towers Building. Persons interested in attending should call in advance; (301) 496-7687.

November 11-12, 1975

Meeting of the Technical Advisory Committee on Poison Prevention Packaging; 1750 K Street, N.W. For additional information, contact the Office of the Secretary, (202) 634-7700.

MEETINGS OF THE STANDARDS DEVELOPMENT OFFERORS

"Offerors", organizations which the Commission has selected to develop recommended consumer product safety standards under Section 7 procedures of the CPSA, hold frequent meetings during development of the standard. Generally, these public meetings are announced in advance through the printed Public Calendar; meetings scheduled without sufficient advance notice will be listed in the Master Calendar maintained in the Office of the Secretary, 1750 K Street, N.W., Washington, D.C. Staff from CPSC's Office of Standards Coordination and Appraisal, and from other bureaus and offices, regularly attend these meetings.

Because dates and places scheduled for the meetings may change, persons interested in attending should contact the Project Director listed below. Further information on the standards development process is available from the Project Director or Commission Monitor listed below, or from the Office of the Secretary.

PLAYGROUND EQUIPMENT: National Recreation and Park Association (NRPA) Project Director Robert Buechner, 1601 North Kent Street, Arlington, Va. 22209, (703) 525-0606. Commission Monitor Bernard Scharf, (301) 496-7606. Note: This offeror will develop safety related requirements for possible standards on playground equipment under the Federal Hazardous Substances Act (FHSA) under procedures similar to those of Section 7 of the CPSA. Unless noted, all meetings are at NRPA offices, and begin at 9:00 a.m.

Scheduled meetings are: November 21-22, and December 12-13.

RECENT ADVISORY OPINIONS

The Commission's Office of the General Counsel recently issued the following Advisory Opinion:

#225 October 21, 1975 Jurisdiction over paddle boats

Copies of Advisory Opinion are available from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. This office also maintains an index of opinions, also available upon request.

RECENT CPSC FEDERAL REGISTER ISSUANCES

October 16 Home Power Saws: Denial of Petition to Require Safety Booklets In denying this petition, the Commission announces that it believes that requiring safety booklets to be distributed with home workshop power saws at this time "may be of marginal utility." However, the Commission intends to continue its research on the hazards associated with these saws.

October 16 Bookmatches: Extension of Time for Publishing a Proposed Rule or Withdrawing Notice of Proceeding--until December 1, 1975.

October 22 Children's Sleepwear: One proposed amendment and three policy statements on CPSC regulations on children's sleepwear sizes 0-6X and 7-14.

October 31 Swimming Pool Slides Proposed Standard: Correction This document adds Table 3, which was inadvertently omitted from the Commission's proposed swimming pool slide standard (September 15, 1975). Comments on the Table are being accepted in the Office of the Secretary until November 10, 1975.

MEETINGS BETWEEN COMMISSION STAFF AND OUTSIDE PARTIES

Asterisks (*) indicate meetings for this week which appear for the first time in the Public Calendar. The notation (S) or (N) indicates that the CPSC staff person holding or attending the meeting has determined that the meeting will involve substantial interest matters (S) or will not involve substantial interest matters (N), as defined by the Commission's meetings policy.

Week of November 2-8, 1975

November 3

* Commissioner R. David Pittle meeting with Dr. Paul Salmon, American Association of School Administrators, to discuss product safety in secondary curriculae. Commissioner Pittle requested the meeting; it is at 1801 N. Moore St., Rosslyn, Virginia at 9:30 a.m. For additional information, call (202) 634-7726. (N)

Samuel M. Hart, director, Chicago Area Office, speaking on CPSC to a family and consumer economics course, University of Illinois, Urbana. (N)

MEETINGS. . .(Cont.)

November 3-4

Dr. Robert M. Hehir, director, Bureau of Biomedical Science, attending a meeting of the Science Advisory Board to the National Center for Toxilogical Research; Jefferson and Little Rock, Arkansas. Topics of the meeting include mutagenesis, carcinogenesis, inhalation and hypersensitivity. (N)

November 4

Commissioner Constance Newman attending a meeting of the Committee on Compliance and Enforcement Proceedings, Administrative Conference of the U.S., at the Conference's offices, Washington. (S)

Executive Director Stanley R. Parent meeting with Carl Clark, Commission for Advancement of Public Interest Organizations, to discuss a system for providing product safety information to consumers. Mr. Clark requested the meeting; it is in Room 440 Westwood Towers Building. For additional information, contact Joan Phillips; (301) 496-7601. (N)

Robert D. Verhalen, director, and Elaine Tyrrell and Lorraine Desbordes, Bureau of Epidemiology, meeting with Stanley Rodkowski and Thomas Blackburn Match Division, Diamond International, to discuss interpretation of NEISS data on match-related injuries. Ms. Desbordes requested the meeting; it is in Room 336 Westwood Towers Building at 10:30 a.m. For additional information, contact Mrs. Kelly (301) 496-7681. (S)

Walter Thomas, Bureau of Engineering Sciences, and other CPSC staff meeting with Ira Radovsky, American Robin, Inc., to discuss use of improved zippers in emergency exits for tents. Mr. Radovsky requested the meeting; it is in Room 900 Westwood Towers Building at 11:00 a.m. For additional information , call (301) 496-7245. (S)

Bernard Schwartz, Office of Standards Coordination and Appraisal, meeting with Thomas Roberts, E.L. Rohi (T. Ellis) Co., to discuss carpet and rug flammability requirements. Mr. Schwartz requested the meeting; it is in Room 818 Westwood Towers Building at 10:00 a.m. For additional information, call Mr. Schwartz, (301) 496-7606. (N)

November 4-6

Peter Armstrong, Bureau of Engineering Sciences, attending a meeting of the ASTM F15.03 Committee on voluntary standards for bathtub and shower area products, at ASTM, Philadelphia. For additional information, contact Mr. Armstrong, (301) 496-7588. (S)

November 5

Commissioner R. David Pittle speaking on CPSC to the Industrial Designers Society, J.C. Penney Building, New York. (N)

MEETINGS. . .(Cont.)

November 5

William V. White, director, Bureau of Information and Education, speaking at the Consumer Education Program for members of the Outdoor Power Equipment Institute; Mayflower Hotel, Washington. (N)

Samuel D. Hart, director, Chicago Area Office, speaking on CPSC at a meeting of the ANSI Committee on Audio-Visual Training; Bell & Howell, Lincolnwood, Illinois. (N)

Albert S. Dimcoff, Office of the Executive Director participating in a seminar for manufacturers sponsored by the Nebraska Safety Council, Lincoln. Topic of the seminar is the relationship of CPSC mandatory standards activity to voluntary standards efforts. For additional information, contact Mr. Dimcoff, (301) 496-7601. (N)

Joann Langston and Don Clay, Office of Program Planning and Evaluation, meeting with Charles T. Meadow, Drexel University and Dr. Oliver L. Costich, Wharton School, representing the College of Physicians of Philadelphia, to discuss long-range planning. Mr. Meadow requested the meeting; it is in Room 802 Westwood Towers Building at 1:30 p.m. For additional information, contact Ms. Langston at (301) 496-7334. (N)

William V. White, director, Bureau of Information and Education, meeting with Gus Fritsche, Smoth, Bucklin & Associates, Inc., to discuss joint efforts in information and education. Mr. Fritsche requested the meeting; it is in Room 738 Westwood Towers Building at 2:30 p.m. (N)

Robert McAfee, Denver Area Office, speaking on toy safety to the Young Mothers Club, Denver YWCA. (N)

November 5-6

Stanley S. Morrow, Office of Standards Coordination and Appraisal, and Peter Armstrong, Bureau of Engineering Sciences, attending a meeting of the ASTM F15.03 Committee on voluntary standards for bathtubs and shower stalls. The meeting is at ASTM, Philadelphia. For additional information, contact Mr. Morrow, (301) 496-7511. (S)

Robert W. Kilpatrick and Barbara McEachern, Boston Area Office, speaking on the Consumers' Impact on Product Safety, to the Rhode Island Consumers' Council, Providence. (N)

November 6

James P. Talentino, Bureau of Engineering Sciences, attending the monthly meeting of the Washington/Baltimore Chapter, American Society of Gas Engineers, Columbia, Maryland. (N)

MEETINGS. . .(Cont.)

November 6

* Medical Director Albert F. Esch and Joe Kim, Office of the Medical Director, meeting with Harry Bohlman, MD, to discuss human factors aspects of football injuries. Dr. Bohlman requested the meeting; it is in Room 100 Westwood Towers Building at 10:00 a.m. For additional information, call Dr. Esch, (301) 496-7981. (N)

November 6-7

* Dr. Robert M. Hehir, director, Bureau of Biomedical Science, attending a seminar on carcinogenicity sponsored by the Occupational Safety and Health Administration, Sheraton Conference Center, Reston, Virginia. The meeting is closed at OSHA's request. For additional information, contact Dr. Hehir, (301) 496-7937. (N)

James V. Ryan, Office of Standards Coordination and Appraisal, discussing fabric flammability with the American Association of Textile Chemists and Colorists, at AATC, Raleigh, North Carolina. (N)

Catherine McDade, Chicago Area Office, maintaining a CPSC exhibit at the Illinois Home Economics Association annual conference, Sheraton-Chicago. (N)

November 7

Commissioner Constance Newman is the keynote speaker at the annual Farm, Home and Ministers Institute, sponsored by Tennessee State University, Nashville. (N)

* Commissioner R. David Pittle meeting at lunch with Emmett Hines, Armstrong Cork Company, to discuss CPSC in general. Mr. Hines requested the meeting. For additional information, contact Beth Kilker, (202) 634-7726. (N)

* Donald R. Mackay, Office of Standards Coordination and Appraisal, meeting with Richard Bogue, Underwriters' Laboratories, to discuss the UL/Power Tool Institute voluntary standard for hedgetrimmers. Mr. Bogue requested the meeting; it is in Room 824 Westwood Towers Building. For additional information, contact Mr. Mackay, (301) 496-7511. (S)

* William V. White, director, Bureau of Information and Education, meeting with Stella Miller, National Paint and Coatings Association, to discuss information programs on airless paint spray guns. The meeting is at 1500 Rhode Island Ave., N.W., Washington. For additional information, contact Mr. White, (301) 496-7621. (N)

* Harry Jettke, Cleveland Area Office, meeting with Lois Wachtman and Phil Rosenfield, Evans Adhesive Co., to discuss the firm's proposed label review program and FHSA labeling regulations. The firm requested the meeting; it is at the Cleveland Area Office. For additional information, contact Mr. Jettke, (216) 522-7150. (N)

MEETINGS. . .(Cont.)

November 7

Victor Petralia, director, Denver Area Office, speaking on Product Safety Aspects of Childhood, to pediatric nurse practitioners, University of Colorado Medical Center, Denver. (N)

Week of November 9-15, 1975

November 9-11

Dr. Robert M. Hehir, director, Bureau of Biomedical Science, participating in a panel at the nith Advanced Seminar in Clinical Ecology, Toronto, Ontario, Canada. For additional information, contact Ann Hamann, (301) 496-7937. (N)

November 10

Medical Director Albert F. Esch, and staff, meeting with Dr. Robert Mackie, Human Factors Research, to discuss mutual areas of interest in human factors. Dr. Mackie requested the meeting; it is in Room 100 Westwood Towers Building, at 10:30 a.m. For additional information, contact Dr. Esch, (301) 496-7981. (N)

Michael Gidding, Bureau of Biomedical Science, meeting with Ron deNeuf, Brockway Glass Co., to discuss poison prevention packaging for prescription drugs. Mr. deNeuf requested the meeting; for additional information, contact Mr. Gidding, (301) 496-7908. (N)

November 11

Donald R. Mackay, Office of Standards Coordination and Appraisal, attending a meeting of the ASTM Committee F15.04 on highchairs standards. The meeting is in Philadelphia. For additional information, contact Mr. Mackay, (301) 496-7511. (S)

Dr. Marilyn C. Bracken, Bureau of Biomedical Science, meeting with Everett Call and Mr. Murray, National Paint and Coatings Association, to discuss NPCA's report on materials used in paint. Dr. Bracken requested the meeting; it is in Room 700 Westwood Towers Building. For additional information, call (301) 496-7765. This meeting was previously scheduled for September 17. (S)

Langston F. Bate, Jr., Bureau of Engineering Sciences, meeting with Keith Austin, Value Engineering Co., to discuss ladder tests and modes of failure. Mr. Bate requested the meeting; it is at Value Engineering, Alexandria, Virginia. For additional information, contact Mr. Bate, (301) 496-7571. (S)

William V. White, director, Bureau of Information and Education, meeting with Irvin Jester, Duane Rentals, to discuss consumer education programs. The meeting is in Room 744 Westwood Towers Building at 2:00 p.m. For

MEETINGS. . .(Cont.)

November 11 cont.

additional information, contact Mr. White, (301) 496-7621. (N)

November 11-12

Barbara McEachern, Boston Area Office, Essie Hughes and Dennis Sargent, New Hampshire Department of Education, to discuss bicycle safety curriculum guidelines. Mr. Sargent requested the meeting; it is at the University of New Hampshire, Durham. For additional information contact Ms. McEachern, (617) 223-5576. (N)

November 12

Dr. Robert M. Hehir, director, Bureau of Biomedical Science, meeting with David Engel, HUD, Dr. John Moore, National Institute of Environmental Health Science, and Carl Vanderlinden and staff, Johns Manville Corp., to discuss the relative safety or hazard of mineral fiber cement sheet to cover lead-based paint hazards. Mr. Engel requested the meeting; it is at Johns Manville, Denver. For additional information, contact Ann Hamann, (301) 496-7937. (N)

Donald R. Mackay, Office of Standards Coordination and Appraisal, attending a meeting of the ASTM Committee F15.05 Committee on voluntary standards for playpens. The meeting is at the Sheraton Hotel, Philadelphia. For additional information, contact Mr. Mackay, (301) 496-7511. (S)

Seattle Area Office staff meeting with custom house brokers, importers and U.S. Customs to discuss the CPSC import policy. Office Director Joan Bergy requested the meeting; it is in Room 3240 Federal Building, Seattle. For additional information, call (206) 442-5276. (N)

November 12-13

Stan Morrow, Office of Standards Coordination, attending a meeting of the ASTM Committee F8.11 on voluntary standards for trampolines. The meeting is in Denver. For additional information, contact Mr. Morrow, (301) 496-7511. (S)

November 13

Anthony D. Rossi, Bureau of Engineering Sciences, meeting with the Council for National Cooperation in Aquatics (CNCA) to discuss safety standards for swimming pools. CNCA requested the meeting; it is in Fort Lauderdale, Florida. For additional information, contact Mr. Rossi, (301) 496-7571. (S)

November 13-14

Donald R. Mackay, Office of Standards Coordination and Appraisal, meeting with the U.S. Technical Advisory Group for the International Electrotechnical

MEETINGS. . .(Cont.)

November 13-14 cont.

Society, to discuss the U.S. position on an IEC document. The meeting is at the Crystal City Marriott, Arlington, Virginia. For additional information, contact Mr. Mackay, (301) 496-7511. (S)

November 14

Commissioner Constance Newman is the luncheon speaker at the American Bar Association National Institute on Consumer Law Practice, Fairmont Colony Square Hotel, Atlanta. (N)

Stan Morrow, Office of Standards Coordination and Appraisal, attending a meeting of the ASTM F15.02 Committee on injury data analysis and sampling plans for the voluntary standard on cigarette lighters. The meeting is in Philadelphia. For additional information, contact Mr. Morrow, (301) 496-7511. (S)

John F. Rabusch, director, Minneapolis Area Office, meeting with the Wisconsin Division of Health to discuss Wisconsin involvement in the NEISS program. The state requested the meeting; it is in Madison. For additional information, contact Mr. Rabusch, (612) 725-3424. (N)

# # #

federal register

TUESDAY, NOVEMBER 4, 1975

PART IV:

CONSUMER PRODUCT SAFETY COMMISSION

■

MEETINGS, ADVANCE PUBLIC NOTICE, PUBLIC ATTENDANCE, AND RECORDKEEPING

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER A—GENERAL

PART 1001—ADMINISTRATION, PRACTICES, AND PROCEDURES

Procedural Policy on Meetings, Prior Public Notice, and Records of Proceedings; Deletion

The Consumer Product Safety Commission hereby deletes § 1001.60 of Title 16, Code of Federal Regulations, Part 1001 because, elsewhere in the FEDERAL REGISTER today, the Commission has published 16 CFR Part 1012, "Meetings: Advance Public Notice, Public Attendance, and Recordkeeping." Section 1001.60 is therefore obsolete.

Dated: October 29, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.75-29517 Filed 11-3-75;8:45 am]

PART 1001—ADMINISTRATION, PRACTICES, AND PROCEDURES

PART 1012—MEETINGS: ADVANCE PUBLIC NOTICE, PUBLIC ATTENDANCE, AND RECORDKEEPING

Adoption of Meetings Policy

The purpose of this document is to promulgate the policy set forth below regarding requirements of the Consumer Product Safety Commission (CPSC) for advance public notice, public attendance, and records for meetings that are of substantial interest involving Commissioners and/or CPSC staff and outside parties. In developing a meetings policy, the Consumer Product Safety Commission has followed the principle that the public interest is best served when regulatory affairs are open to the fullest extent practicable. To that end, meetings and records will be open to the public unless they fall within exceptions required by law or established in this policy.

The Commission has explicitly detailed its requirements for advance public notice and its requirements that the public be permitted to attend meetings of substantial interest in order to make clear the conditions and exceptions that exist relative to this policy. In addition to the specified exceptions, the Commission acknowledges that extraordinary circumstances arise which might require either that advance notice cannot be given or that a meeting be closed or both. To ensure that no one claims the existence of such extraordinary circumstances without justification, the policy set forth below requires: (1) Approval from the Chairman whenever CPSC staff, other than personal staff of Commissioners, believe it necessary to hold or attend a meeting of substantial interest to the public without giving the advance public notice specified in §§ 1012.3, and 1012.4(c)(1) of this part and (2) approval from a majority of the Commission whenever CPSC staff, other than personal staff of Commissioners, believe it necessary to hold or attend a closed meeting of substantial interest.

BACKGROUND

In the FEDERAL REGISTER of October 24, 1974 (39 FR 37780), the Consumer Product Safety Commission proposed an interim and amended procedures policy (16 CFR 1001.60 through 1001.67) regarding public notification and disclosure of meetings to serve as its interim policy until finalized. Previously, on October 1, 1973 (38 FR 27214), the Commission had promulgated 16 CFR 1001.60 prescribing a basic procedural policy for meetings, prior public notice, and records of proceedings.

With the expansion of the material for procedural policy on meetings proposed October 24, 1974, from 16 CFR 1001.60 into 16 CFR 1001.60 through 1001.67, the material became an appropriate size and nature to constitute a part. Thus, the material is adopted below as 16 CFR Part 1012.

RESPONSE TO PROPOSAL

In response to this proposal of October 24, 1974, 16 comments were received from interested parties, including the Chemical Specialties Manufacturers Association, Inc.; Consumer Electronic Group of the Electronic Industries Association; the National Cash Register Co.; Glass Container Manufacturers Institute; Power Tool Institute; J. I. Case; Walker Manufacturing Co.; Thomas K. Wilka, Public Interest Seminar, Georgetown University Law Center; Allen S. Sacks, consumer representative, Product Safety Advisory Council, Consumer Product Safety Commission; a consumer; and members of the CPSC staff reflecting experience with implementation of the proposal.

Two of the comments supported the proposal as published. The main issues raised in the remainder of the comments and the Commission's conclusions thereon are as follows:

1. *Definitions—a. Meeting.* Regarding proposed 16 CFR 1001.61(d) CPSC staff point out that the definition is too broad and ask for clarification and specificity.

The Commission believes the policy clearly indicates that the Commission does not intend that any everyday encounter of its staff with the public constitutes a "meeting" that would be of public interest. However, the Commission does not intend that substantive discussions between staff and the public not be construed as a meeting simply because they are held in a nonbusiness environment.

The Commission therefore has decided that "meeting" does not need to be redefined.

b. *Outside party.* Regarding proposed 16 CFR 1001.61(e), one industry comment suggests that in the definition of "outside party," the exemption of news media and not of all persons when they are acting in a news-gathering capacity is discriminatory. Another industry comment predicts that members of the news media will meet privately with Commission employees for news-gathering purposes and requests that industry representatives be allowed to attend.

The Commission believes that the public interest is best served when regulatory affairs are open to the fullest extent practicable. To that end, the Commission opens all its meetings to the public whenever possible. Since all interested persons are not able to attend these meetings, the Commission believes that the news media will make important aspects of the proceedings public knowledge. Consequently, the public will learn of Commission activities and be more able to assist the Commission in the goal of reducing the risks of injury associated with consumer products.

The Commission also recognizes that media may meet privately with Commission staff for news gathering. The Commission intended that the exemption provided for such meetings with the media should not be used to exclude any member of the public from attending. The term "news media" is intended by the Commission to include trade press. Therefore, the Commission declines to adopt the suggested changes.

An advisory council member contends that the definition does not make clear whether an individual member of a CPSC advisory council meeting with a Commissioner to discuss a substantial interest matter is an outside party. Another comment states that it is not clear whether an offeror, preparing a standard for CPSC, is a contractor or an outside party.

The Commission concludes that when advisory council members and offeror personnel are not acting in an official capacity, they are outside parties. Therefore, the definition at 16 CFR 1012.2(e) has been changed to clarify this matter.

A consumer comments that the definition of outside party is vague and dangerous because there is no definition of "inside party." The consumer asks about the status of people under contract who do work for the Commission. The Commission considers it unnecessary to define "inside party" because it has defined "outside party." The Commission considers contractors doing work for the Commission as not being within the scope of outside parties, therefore § 1001.63(c)(4)(i)(f) of the interim policy has been omitted for clarity, although 16 CFR 1012.2(e) has not been changed because contractors were specifically excluded from the term "outside party" in the interim policy.

c. *Substantial interest matter.* One individual's comment suggests redefining the term "substantial interest matter" in proposed 16 CFR 1001.61(f) to include any topic of discussion between CPSC staff or Commissioners and a party potentially subject to CPSC regulatory action and suggests requiring advance notice and a meeting summary for all meetings between CPSC personnel and an "outside party" as defined in proposed 16 CFR 1001.61(e).

The Commission believes that it is unnecessary to require advance notice for meetings between CPSC employees and

"outside parties" where nonsubstantial interest matters are discussed because such meetings are of minimal interest to the public. However, as indicated in § 1012.4(c)(1)(ii)(A) of this policy, such meetings are to be listed in advance on the public calendar where the public interest would be served.

Another comment from an individual points out that this definition includes more than pending matters and asks if this broad definition is intentional. The commenter is correct. The Commission intends that the definition of "substantial interest matter" be broad to ensure that meetings of substantial public interest be announced in advance and open to the public, when possible.

One industry and three staff comments urge the Commission to clarify the definition and/or expand the list of examples of meetings and activities that are not substantial matters. Although the Commission believes that the definition of "substantial interest" contained in the interim policy is sufficiently clear, additional examples of matters that are, and that are not, substantial interest matters have been included.

2. *Advance public notice.* A staff comment questions whether advance notice and meeting summaries are required for speeches given before outside parties.

The Commission concludes that speeches generally do not meet the definitions of substantial interest matters since they generally convey information about the status of matters before the Commission and do no involve significant discussion about such matters. However, the Commission encourages the staff to list notices of upcoming speeches in the public calendar for informational purposes. The regulation (16 CFR 1012.4(c)(1)(ii)(F) below) has been revised accordingly.

An industry comment urges the Commission to consider providing a period of overlap when the interim meetings policy is finalized during which the Commission's day-to-day meeting activities would be published in the FEDERAL REGISTER in addition to being listed in the public calendar.

The Commission has not used the FEDERAL REGISTER for the above purposes since October 1974, and provides the CPSC's public calendar regularly and free of charge to all those who request it. The Commission therefore concludes that the suggested accommodation is unnecessary.

The regulation (16 CFR 1012.3 below) accordingly has not been changed in this regard.

3. *Location of meetings between CPSC and outside parties.* Regarding proposed 16 CFR 1001.63(c), a comment suggests that the regulation would be more comprehensive if the requirements for meetings between Commissioners or CPSC staff and outside parties applied not only to meetings at CPSC premises and at the premises of outside parties, but also to other locations at which the Commissioners or CPSC staff would likely meet with outside parties.

The Commission intended the Regulations to cover such meetings. The regulations (16 CFR 1012.4(c) and 1012.3(a)(1) below) has been changed accordingly to clarify that it includes meetings between Commissioners or CPSC staff and outside parties at any location.

4. *Notice and public attendance requirements for section 15(b) notifications—a. Initial notifications.* Regarding proposed 16 CFR 1001.63(c)(1)(i)(b) an individual commenter objects to the exemption of initial section 15(b) notifications from the advance notice and open-meetings requirements.

The Commission finds that advance notice of and public attendance at meetings involving initial section 15(b) notifications would be impossible because with many initial notifications under section 15(b) of the Consumer Product Safety Act it is necessary for the CPSC staff to act immediately upon the notification in the interest of public safety. Also, exempting the initial notification will protect from adverse publicity parties who report possible hazards which, upon investigation, turn out not to require CPSC action. Subsequent meetings and negotiations, however, are not excepted from the notice requirement. The regulation (16 CFR 1012.4(c)(1)(ii)(B) below) has been revised to so state, but 16 CFR 1012.4(c)(2)(ii)(C) has not been changed.

b. *Subsequent meetings.* Regarding proposed 16 CFR 1001.63(c)(1)(i)(b), an individual commenter suggests that the exemption from advance notice and open-meeting requirements not be limited to meetings involving initial section 15(b) notifications. The commenter contends that the meetings following the initial section 15(b) notification meeting also require frank negotiations without the defensiveness and caution likely to be generated by the presence of outsiders. Another commenter believes subsequent meetings should be closed to the public because confidential information or trade secrets might be discussed.

The Commission believes that the suggested changes would be inappropriate since the intent of the regulation is to give public notice on substantial interest matters whenever practical. Since negotiations leading to the settlement of cases are open, the public should be given advance notice of such negotiations. The Commission will give all interested persons the opportunity to observe its regulatory affairs and exempts initial 15(b) notifications in the interest of speed and to permit frank exploratory reporting and discussion that may take place at that time. In addition, § 1012.4(c)(2)(ii)(A), already provides that portions of meetings at which proprietary data are to be discussed in a manner as to imperil their confidentiality are not open to the public. Accordingly the suggestion is not adopted.

5. *Attendance by the public—a. Proprietary data.* Regarding proposed 16 CFR 1001.63(c)(4)(i)(a), which provides for closed meetings to protect the confidentiality of proprietary data, a comment of an individual states that the concept of "proprietary data" is much broader than that of a trade secret and other material protected by law. The comment contends that unless the term "proprietary data" is defined in the regulation, the public could be excluded from many meetings.

The Commission recognizes that the term "proprietary data" may encompass various materials protected by law, including trade secrets. The Commission directs that its Office of the General Counsel shall determine whether materials are proprietary data and thereby fall within exceptions of the law or the subject regulation. The policy (16 CFR 1012.4(c)(2)(ii)(A) below) has been changed accordingly.

b. *Lack of space.* Regarding proposed § 1001.63(c)(4)(i)(b), a consumer objects to permitting a meeting, open to the press or other news media, to be otherwise closed due to lack of space. The commenter suggests that many meetings involving substantial interest matters could easily be closed to interested consumers by simply claiming there is room only for the press and news media.

The Commission when accepting invitations, requests that every effort be made to accommodate observers and when space is limited the public can be informed of details of the meeting by members of the press and media. The regulation (16 CFR 1012.4(c)(2)(ii)(B) below) therefore has not been changed.

c. *Initial section 15(b) notifications.* Regarding proposed 16 CFR 1001.63(c)(4)(i)(c), which provides for a closed first meeting dealing with initial 15(b) notifications, an industry comment suggests a definition be provided for the term "initial notification."

"Initial notification" is defined by the Commission's section 15(b) policy found at 16 CFR 1115. The Commission finds that open meetings involving initial section 15(b) notifications would be impossible because with many initial notifications under section 15(b) of the Consumer Product Safety Act it is necessary for the CPSC staff to act immediately upon the notification in the interest of public safety. Also, exempting the initial notification will protect manufacturers who may report potential possible hazards which will later turn out not to require CPSC action from injuring their business because of adverse publicity. Accordingly, the regulation (16 CFR 1012.4(c)(2)(ii)(C) below) has not been changed.

d. *Negotiations for settlement.* Proposed 16 CFR 1001.63(c)(4)(i)(d) provides for closed meetings held during the normal course of field surveillance, inspection, or investigation of a person or company, but not for negotiations leading to settlement of individual cases. The closed meetings are necessary for efficient enforcement of the Acts the Commission administers and to maintain the confidentiality of proprietary data such as formulations, design specifications and other information that could work to eliminate the firms' competitive advantage if disclosed to the public. Two

industry commenters suggest that the regulation be revised to exclude the public from the settlement negotiations. An industry commenter objects to public access to negotiations for settlement on the basis of imperiling the confidentiality of data and because the public presence would hamstring productive settlement discussion where offers may be held against the parties if the settlement does not work out.

The Commission believes that the right of the public to attend negotiations leading to the settlement of any case will not imperil the confidentiality of proprietary data because under 16 CFR 1012.4(c)(2)(ii)(A) the Office of the General Counsel will determine whether proprietary data will be discussed in such a manner as to imperil their confidentiality. Also, the Commission concludes that the concern that negotiations may be hamstrung is overridden by the need to have the public fully informed as to how and why settlements are reached. Therefore, the subject regulation (16 CFR 1012.4(c)(2)(ii)(D) below) has not been changed as suggested.

e. Meetings with other government officials. Regarding proposed 16 CFR 1001.63(c)(4)(i)(e), which provides for closed meetings held with other government agency officials when they request a closed meeting and when the CPSC employee involved finds that extraordinary circumstances so warrant, an individual commenter contends that the test of "extraordinary circumstances" does not delineate a clearly and narrowly drawn exception to the open meetings policy. Similarly, another individual commenter objects to such an exception in any "openness" policy. Several staff comments ask that specific meetings with other government agencies be exempt from the openness requirements.

The Commission believes that close working relationships are required with other government agencies be exempt federal, that often approximate the working relationship among members of CPSC's own staff. While it is the intent of the Commission to give public notice and open to the public all such meetings that it can, it recognizes that it is not practical to open meetings when the other agency requests that they be closed to protect the confidentiality of its information, when cooperative efforts of emergencies require meetings that cannot be anticipated, or when a CPSC or other agency position could be compromised. The regulation (16 CFR 1012.4(c)(2)(ii) below) has been changed in order to clarify these matters.

f. Meetings between CPSC staff and outside parties. Proposed 16 CFR 1001.63(c)(4)(i)(g) provides that a meeting between agency staff (other than Commissioners and their personal staff) and an outside party may be closed if a majority vote of the Commission determines that extraordinary circumstances so require and the reasons therefor are detailed in the public calendar. An industry commenter objects to the requirements that these reasons be detailed in the public calendar and suggests instead that the reasons be given in the public calendar in appropriate general terms. An individual commenter suggests that a test of "extraordinary circumstances" that delineates a clearly and narrowly drawn exception should be added.

The Commission does not agree with these suggestions. The Commission also finds no validity in one commenter's contention that it may be as damaging to a manufacturer as conducting an open meeting if the reasons for closing the meeting are detailed in the public calendar. For example, if the meeting is closed in order for a corporation to seek the views of CPSC staff with respect to the safety of a product, a short statement to this effect should not be damaging. The Commission believes it is able to determine on a case by case basis whether extraordinary circumstances warrant a closed meeting and therefore declines to change this requirement.

The regulation (16 CFR 1012.4(c)(2)(ii)(F) below) has, therefore, not been changed.

g. Meetings between Commissioners and outside parties. Proposed 16 CFR 1001.63(c)(4)(i)(h), permits a meeting between a Commissioner or his or her personal staff, and an outside party to be closed if the Commissioner finds that extraordinary circumstances so require and the reasons therefor are detailed in the public calendar. One industry comment suggests that the reasons be given in appropriate general rather than detailed terms in the public calendar.

For the reasons set forth in the previous paragraph of this Preamble, the Commission does not agree with the commenter's suggestion. The regulation (16 CFR 1012.4(c)(2)(ii)(G) below) has therefore has not been changed.

6. Meeting summaries. Regarding proposed 16 CFR 1001.64(a), which prescribes requirements for meeting summaries, one industry comment suggests that summaries of closed meetings be kept confidential. One industry and one staff comment suggest not requiring that summaries of authorized closed meetings be made available to the public.

The Commission intends that the regulation not require meeting summaries of closed meetings or portions of meetings that are closed to contain any proprietary data or information otherwise protected by law from disclosure to the public.

An industry commenter suggests that outside parties participating in open meetings be given an opportunity to review and comment on the meeting summary before it becomes part of the public record. He also suggested that meeting participants be permitted to submit their own meeting summary for the public record when they disagree with the Commission's meeting summary.

The Commission believes the suggested provisions unnecessary since all members of the public have the opportunity to communicate in writing with the Commission on matters before it and such correspondence becomes a part of the Commission's public record. Accordingly, the regulation (16 CFR 1012.5(a) below) has not been changed.

7. News media. Proposed 16 CFR 1001.65 exempts the news media from the meetings policy requirements when meeting with Commission representatives to be informed of Commission activities. An industry comment complains that parties with a direct interest in a specific matter pending before the Commission should be informed about a decision by the Commission rather than by the news media.

The Commission agrees with this comment and will attempt to ensure that the Commission notifies a party with a direct interest in a Commission decision immediately after the decision is rendered.

Another industry comment suggests deleting from the regulation the exemption of the news media from the requirements of the meetings policy.

For reasons discussed under 1.b of this Preamble (exempting the news media from the definition of outside party) the Commission does not agree. The regulation (16 CFR 1012.6 below) therefore has not been changed to delete the exemption as suggested.

A third industry comment asks if the public will be excluded from planned interviews and briefings between the Commissioners, the staff, and the news media.

The Commission does not intend to exclude the public from planned briefings between the Commissioners and the news media, for reasons given in 1.b of this Preamble.

8. Telephone conversations. Regarding proposed 1 CFR 1001.66, which prescribes the meetings policy requirements on telephone conversations, an industry commenter suggests the regulations should be revised to eliminate the requirement that summaries of telephone conversations be made available to the public in cases where closed meetings are authorized.

The Commission believes that it is important that summaries of all meetings and telephone conversations involving substantial interest matters be available to the public. However, this meetings policy does not require summaries to contain any proprietary data or information otherwise protected by law from disclosure to the public. Therefore the regulation (16 CFR 1012.7 below) is not changed to adopt this suggestion.

Another industry commenter contends that a participating outside party should be permitted to review and comment on any summary of a telephone conversation before the summary is incorporated in the record.

The Commission finds such permission unnecessary because all members of the public have the opportunity to communicate in writing with the Commission on matters before it and such correspondence becomes a part of the Commission's public record.

An industry commenter suggests that proposed 16 CFR 1001.66(b) be modified so that it will not discourage the use of CPSC as a source of information.

The Commission does not intend nor expect the regulation to interfere with the availability of CPSC staff to discuss informational matters over the telephone. The regulation (16 CFR 1012.7 below) is thought to permit this exchange and is not changed.

In addition to the changes specified above, various portions of the proposed regulation have been changed for clarification.

Having considered the proposal, the comments received, and other relevant material, the Commission concludes that the proposed regulations, changed as described above, shall be promulgated as set forth below.

Accordingly, pursuant to provisions of the Consumer Product Safety Act (15 U.S.C. 2051–81), the Federal Hazardous Substances Act (15 U.S.C. 1261–74), the Flammable Fabrics Act (15 U.S.C. 1191–1204), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–76), and the Refrigerator Safety Act (15 U.S.C. 1211–14), Title 16, Chapter II, Subchapter A, is amended by:

§ 1001.60 [Deleted]

1. Deleting § 1001.60

2. Adding a new Part 1012 as follows:

Sec.

AUTHORITY: Consumer Product Safety Act (15 U.S.C. 2051–81), the Federal Hazardous Substances Act (15 U.S.C. 1261–1274), the Flammable Fabrics Act (15 U.SC. 1191–1204), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–76), and the Refrigerator Safety Act (15 U.S.C. 1211–14).

§ 1012.1 General policy considerations.

(a) In order for the Consumer Product Safety Commission to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products, the Commission must involve the public to the fullest possible extent in its activities.

(b) To guarantee public confidence in the integrity of its decisionmaking, the Commission must, to the fullest possible extent, conduct its business in an open manner which is free from any actual or apparent impropriety.

(c) To achieve the goals set forth in paragraphs (a) and (b) of this section, the Commission believes that, wherever practicable, it should notify the public in advance of all meetings involving matters of substantial interest held or attended by its personnel and permit the public to attend such meetings. Furthermore, to ensure the widest possible exposure of the details of such meetings, the Commission should keep records of them which are freely available for inspection by the public.

§ 1012.2 Definitions.

As used in this Part 1012, the following words shall have the meanings set forth:

(a) *Agency.* The entire organization which bears the title Consumer Product Safety Commission.

(b) *Agency staff.* Employees of the Agency other than the five Commissioners.

(c) *Commission.* The five Commissioners of the Consumer Product Safety Commission acting in an official capacity.

(d) *Meeting.* Any face-to-face encounter in which one or more employees, including Commissioners, of the Agency discuss any subject relating to the Agency or any subject under its jurisdiction.

(e) *Outside party.* Any person not an employee, not under contract to do work for the Agency, or not acting in an official capacity as a consultant to the Consumer Product Safety Commission, such as advisory committee members or oferor personnel. Examples of persons falling within this definition are representatives from industry, consumer groups and government. Members of the news media are not considered to be outside parties when acting in a newsgathering capacity. (See also § 1012.6.)

(f) *Substantial interest matter.* Any matter, other than that of a trivial nature, that pertains in whole or in part to any issue that is likely to be the subject of a regulatory or policy decision by the Commission. Pending matters, i.e., matters before the Agency in which the Agency is legally obligated to make a decision, automatically constitute substantial interest matters. Examples of pending matters are: scheduled administrative hearings; matters published for public comment; petitions under consideration; and mandatory standard development activities. The following examples do not constitute substantial interest matters: data collection; inquiries concerning the status of a pending matter; discussions relative to general interpretations of existing laws, rules, and regulations; inspection of non-confidential CPSC documents by the public; negotiations for contractual services; and routine CPSC activities such as recruitment, training, meetings involving consumer deputies, or meetings with hospital staff and other personnel involved in the National Electronic Injury Surveillance System.

§ 1012.3 Forms of advance public notice of meetings; public calendar and Federal Register.

Advance notice of Agency activities is provided to the public so that it may know of and participate in these activities to the fullest extent possible. The following two types of notices are utilized by the Agency.

(a) *Public calendar.* (1) The printed public calendar is the principal means by which the Agency notifies the public of its day-to-day activities. The public calendar provides advance notice of public hearings, Commission meetings, meetings with outside parties involving substantial interest matters, selected staff meetings, Advisory Committee meetings, and other events such as speeches, and participation in panel discussions, regardless of the location. The public calendar also lists recent CPSC FEDERAL REGISTER issuances and Advisory Opinions of the Office of the General Counsel.

(2) Upon request in writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, any person or organization will be sent the public calendar on a regular basis free of charge. In addition, interested persons may contact the Office of the Secretary to obtain information from a master calendar kept current on a daily basis.

(3) The master calendar, supplemented by meeting summaries, is intended to serve the requirements of section 27(j)(3) of the Consumer Product Safety Act.

(4) Commissioners and Agency staff are responsible for reporting meeting arrangements to the Office of the Secretary so that they may be published in the printed public calendar at least seven days before a meeting, except as provided in § 1012.4(c)(1). Such reports shall include the following information:

(i) Probable participants and their affiliations;

(ii) Date, time and place of the meeting;

(iii) Subject of the meeting (as fully and precisely designated as possible);

(iv) Who requested the meeting;

(v) Whether the meeting involves matters of substantial interest;

(vi) Notice that the meeting is open or reason why the meeting or any portion of the meeting is closed (e.g., discussion of trade secrets); and

(vii) Name and telephone number of the CPSC host or contact person.

(b) *Federal Register.* The FEDERAL REGISTER is the publication through which official notifications, including formal rules and regulations of the Agency, are made. Because the public calendar is the primary device through which the Agency notifies the public of its routine, daily activities, the FEDERAL REGISTER will be utilized only when required by law or when the Agency believes that the additional coverage it can provide is necessary to assist in notification to the public of important meetings.

§ 1012.4 Types of meetings; requirements for advance public notice and attendance by the public.

For the purpose of implementing the Agency's meeting policy, meetings which involve Agency staff or the Commissioners shall be classified in the following categories, and shall be held according to the procedures outlined within each category.

(a) *Hearings.* Hearings are public inquiries held by direction of the Commission for the purpose of fact finding or to comply with statutory requirements. The Office of the Secretary is responsible for providing transcription services at the hearings. Where possible, notice of forthcoming hearings will be published in the public calendar and the FEDERAL REGIS-

ner at least 30 days before the date of said hearings.

(b) *Meetings of the Commission.* Meetings of the Commission are held for the purpose of conducting the formal business of the Agency including the rendering of official decisions, and for the gathering of information by the Commission. Such meetings may be of the following types:

(1) *Executive sessions.* Executive Sessions are sessions at which policy and regulatory decisions are made by the Commission. They are attended solely by the Commissioners and are held by majority vote of the Commission and without advance notice. Formal minutes are the responsibility of the Commission.

(2) *Closed sessions.* Closed sessions are generally attended only by the Commissioners and members of the Agency staff. Closed sessions may be held at the direction of a majority vote of the Commission and without prior notice. The Office of the Secretary is responsible for the minutes.

(3) *Open sessions.* Open sessions are attended by the Commissioners, the Agency staff, and any other individual or group desiring to observe. Active participation of the public at these meetings is at the discretion of the Commission. Members of the public desiring to attend an open session are encouraged to contact the Office of the Secretary at least one day prior to the meeting. Notice of an open session will usually be furnished through the public calendar at least seven days prior to the session. The Office of the Secretary is responsible for the minutes.

(c) *Meetings between commissioners or agency staff and outside parties.* The following requirements shall apply to meetings between Commissioners or Agency staff and outside parties whether hosted or attended at Agency premises or at the premises of outside parties or at any other location:

(1) *Notice.* (i) (A) Notice of meetings with outside parties involving substantial interest matters shall be published in the public calendar at least 7 days in advance of the meeting. Any Agency employee planning to host or attend such a meeting must notify the Office of the Secretary as provided in § 1012.3(a)(4). Once notification has been made, Commission employees subsequently desiring to attend the meeting need not notify the Office of the Secretary.

(B) When there is no opportunity to give 7 days advance notice of a meeting, Agency staff (other than the personal staff of Commissioners) who desire to hold or attend such meeting must obtain the approval of the Office of the Chairman. Personal staff of Commissioners must obtain the approval of their respective Commissioners. If such approval is obtained, the Office of the Secretary must be notified in advance of the meeting to record the meeting on the master calendar. The Office of the Secretary shall publish notice of the meeting as an addendum to the succeeding public calendar. Because it could unduly compromise the independence of individual Commissioners, they need not obtain the permission of the Chairman to hold or attend an emergency unscheduled meeting. Listing of the meeting in the master calendar is still required.

(ii) *Exceptions.* The notice requirement shall not apply to:

(A) Meetings with outside parties not involving substantial interest matters (although such meetings should be listed where the public interest would be served).

(B) Initial notifications pursuant to section 15(b) of the Consumer Product Safety Act, however, subsequent meetings are not excepted from the notice requirement.

(C) Meetings held during the normal course of field surveillance, inspection or investigation of a person or company, including informal citation hearings under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act. However, advance notice is required for any negotiations leading to settlement of individual cases.

(D) Discussions with, or at the request of, members of Congress and their staffs, or the Office of Management and Budget relating to legislation or appropriation matters.

(E) Meetings with Department of Justice employees regarding litigation matters.

(F) Routine speeches given by CPSC personnel before outside parties. However, personnel are encouraged to submit advance notice of these speeches to the Office of the Secretary for inclusion in the public calendar, for information purposes.

(2) *Attendance by the public.* (i) Any person or organization may attend any meeting listed in the master calendar unless that meeting has been listed as a closed meeting. Generally, all meetings between Agency employees and outside parties are open to the public for the purpose of observation or participation, subject only to space limitations. Participation by the public may be permitted by the meeting chairperson. When feasible, a person or organization desiring to attend should give at least one day advance notice to the employee holding or attending such meeting.

(ii) The following meetings are not open to the public:

(A) Meetings, or, if possible, portions of meetings where the Office of the General Counsel has determined that proprietary data are to be discussed in such a manner as to imperil their confidentiality.

(B) Meetings held by outside parties at which limits on attendance are imposed by lack of space need not be open: *Provided,* That such meetings are open to the press or other news media.

(C) Initial notifications pursuant to section 15(b) of the Consumer Product Safety Act. All subsequent meetings shall be open to the public.

(D) Meetings held during the normal course of field surveillance, inspection, or investigation of a person or company, including informal citation hearings under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act. However, the public may attend any negotiations leading to settlement of individual cases.

(E) Meetings held with other government officials when they request that the meeting be closed, and, in the opinion of the Agency employees, extraordinary circumstances warrant closing the meeting.

(F) Meetings between Agency staff (other than Commissioners and their personal staff) and an outside party, when, by majority vote of the Commission, it is determined that extraordinary circumstances require that the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting shall be detailed in the public calendar.

(G) Meetings between a Commissioner, his or her personal staff, and an outside party, when in the opinion of the Commissioner extraordinary circumstances require that the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting shall be detailed in the public calendar.

(H) Discussions with members of Congress and their staffs or the Office of Management and Budget relating to legislation or appropriation matters.

(I) Meetings with Department of Justice employees regarding litigation matters.

(3) *Recordkeeping.* Any Commission employee who holds or attends a meeting involving a substantial interest matter must prepare a meeting summary as described in § 1012.5(a). However, only one meeting summary is required for each meeting, even if more than one CPSC employee holds or attends the meeting.

(d) *Staff meetings.* Staff meetings are attended only by members of the Agency as a general rule. At the discretion of the participants, such meetings may be listed on the public calendar and attendance by the public may be permitted. Recordkeeping is at the discretion of the participants.

(e) *Advisory committee meetings.* Meetings of the Agency's advisory committees are scheduled by the Commission. Notice will be given in both the public calendar and the FEDERAL REGISTER. Advisory committee meetings serve as a forum for discussion of matters relevant to the Agency's statutory responsibility with the objective of providing advice and recommendations to the Commission. The Agency's advisory committees are the National Advisory Committee for the Flammable Fabrics Act, the Product Safety Advisory Council, and the Technical Advisory Committee on Poison Prevention Packaging. The Office of the Secretary is responsible for the recordkeeping for such meetings. All meetings of advisory committees are open to the public except as provided in the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 7770; 5 U.S.C. App. I (Supp. I 1974) and the Commission regulations

under that Act (16 CFR Part 1018; 40 FR 43886, September 24, 1975)).

§ 1012.5 Recordkeeping categories.

Depending on the type and purpose of meetings, different kinds of recordkeeping are appropriate. The following is a list of the types of and requirements for the three categories of recordkeeping utilized by the Agency.

(a) *Meeting summaries.* (1) Meeting summaries are written records setting forth the issues discussed at all meetings with outside parties involving substantial interest matters. A meeting summary should detail the essence of all substantive matters relevant to the Agency, especially any matter discussed which was not listed on the public calendar and should describe any decisions made or conclusions reached regarding substantial interest matters. A summary should also indicate the date and the identity of persons at the meeting.

(2) A meeting summary or a notice of cancellation of the meeting, must be submitted to the Office of the Secretary, as described in § 1012.4(c)(3) within twenty (20) days after the meeting for which the summary is required. The Office of the Secretary shall maintain a public file of the meeting summaries in chronological order.

(b) *Commission minutes.* (1) Commission minutes document the decisions of the Commission. Minutes may be taken verbatim when necessary or desirable and may include attachments such as Commission opinions, briefing papers, or other documents presented at the meeting.

(2) Minutes recorded at executive session are subject to the final approval of the Commission. The Commission's final minutes constitute the official means of recording the decisions of the Commission and the votes of the individual Commissioners when filed with the Office of the Secretary.

(c) *Transcripts.* A transcript is a verbatim record of a meeting. Transcript records may include exhibits submitted to be part of the formal record of a meeting. Transcripts are generally taken at public hearings and certain public meetings when complex subjects indicate verbatim records are desirable. Copies of transcripts are placed on file for public inspection in the Office of the Secretary.

§ 1012.6 The news media.

The Agency recognizes that the news media occupy a unique position relative to informing the public of the activities of the Agency. It is believed that the inherently public nature of the news media requires that their activities be exempt from the requirements of this meetings policy whenever meetings are held with the news media for the purpose of informing them about Agency activities. Such meetings are not exempt in the event that any representative of the news media attempts to influence any Agency employee on a substantial interest matter.

§ 1012.7 Telephone conversations.

Telephone conversations present special problems regarding this meetings policy. It is recognized that persons outside the Agency have a legitimate right to information and to present their views regarding Agency activities. It is further recognized that such persons may not have the financial means to travel to meet with Agency employees. However, because telephone conversations, by their very nature, are not susceptible to attendance or participation by the public, care must be taken to ensure that they are not utilized to circumvent the meetings policy. Two basic rules apply to telephone conversations:

(a) Any telephone conversation in which substantial interest matters are discussed with outside parties must be detailed in a meeting summary which meets the requirements of § 1012.5(a)(1). A summary detailing telephone conversations must be submitted by the CPSC employee involved to the Office of the Secretary within 20 days after the telephone call for which a summary is required. The Office of the Secretary shall maintain a public file of telephone call summaries in chronological order.

(b) All Agency personnel must exercise sound judgment in discussing substantial interest matters during a telephone conversation and in the exercise of such discretion, should not hesitate to terminate a telephone conversation and insist that the matters being discussed be postponed until a meeting with appropriate advance public notice may be scheduled or until the matter is presented to the Agency in writing if the outside party is financially or otherwise unable to meet with the Agency employee.

§ 1012.8 Chart summary of meetings policy.

The following is a chart summary of the meetings policy contained in this Part 1012:

Chart summary of meetings policy

Meeting category	Notice			Attendance		Records		
	Federal Register	Public Calendar	No advance notice	Open	Closed	Minutes	Transcripts	Meeting summary
Public hearing	X	X		X			X	
Involving Commission:								
Executive session		X			X	X		[3]
Closed session		X			X	X		[3]
Open session		X		X		X		[3]
Involving outside parties		[1] X		[2] X	[2] X			[4] X
Advisory committee	X	X		X			X	
Staff meetings		[4] X			[4] X			[4] X

[1] Notice in the Public Calendar is required for all meetings between Commissioners or Agency staff, and outside parties, involving matters of substantial interest; except as described in 16 CFR 1012.4(c)(1)(ii).
[2] Meetings between Commissioners or Agency staff and outside parties are open to the public, except as described in 16 CFR 1012.4(c)(2)(ii).
[3] Meeting summaries are required for meetings where matters of substantial interest are discussed.
[4] At the discretion of participants.

Effective date: This Part 1012 becomes effective on December 4, 1975.

Dated: October 29, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

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Ms. ABZUG. I take it that there is a difference of opinion among the Commissioners in your agency with respect to the executive sessions?

Mr. SIMPSON. Yes, there is. The majority feels that they would oppose opening up the executive sessions. I personally would favor opening up the executive sessions, but I do believe it would have marginal utility in our agency on what you are trying to get at.

We have nothing to hide. There is no reason why we should not be open. There is a majority opposed to it, however.

By the way, during executive session there is no one else in the room except the five people. I believe that if there is going to be an undue influence it is not going to be among the five people.

It is going to come from the outside parties, and all such meetings are required to be open.

As I indicated earlier, the public is invited and there is notice in advance, and the public does attend.

Ms. ABZUG. This is interesting because, after all, your agency does concern itself with the public in the consumer area. It is sometimes embarrassing to people to feel that their thought processes are out there for the public to see. It is not because you want to hide anything, but I think you get used to keeping such things to yourself.

Mr. SIMPSON. That is a common argument. We thought about that 2 years ago when we first decided to open our meetings. Some of the arguments were that it would inhibit a free flow of ideas, and people would grandstand, and so forth. We have not found that to be true in our agency.

I have summarized an awful lot of material that is in the testimony.

Ms. ABZUG. I agree with you. I think that the legislation before us is very moderate. I have begun to beef it up, but I have really not done all that I think should be done with it.

This is a problem which I have confronted with a lot of the legislation in this field. The Privacy Act, the Freedom of Information Act, and so on.

I have been helping to coauthor this since I have been on this committee, but it is a very slow process. For example, on the point that you criticized about this bill; namely, that the legislation should cover single-headed as well as multiheaded agencies and departments, I do not disagree with you. But you run into enormous problems because everyone says your legislation will not pass in that form. This is always our problem.

Do you think all agencies, single-headed as well as multiheaded, should be covered? Do you feel there is any inhibition?

Mr. SIMPSON. I am saying that as to the kind of activities that I can talk about in our agency, I think opening up the meeting of the collegial body I believe is one of the most minimal effectiveness measures.

So, if this is the only Sunshine bill we get out of the Congress, then we will not have dealt with the problem.

The real thing is to deal with meetings of officials who are making inputs into rules and regulations all up and down the agencies, whether it be grade 11 or Presidential appointees.

Ms. ABZUG. There is an interesting question. How far should we go? Should a man have to leave his office open all day?

Mr. SIMPSON. We define that as those of substantial interest. That is, on other than trivial matters.

Of course, the meetings are noticed in advance, so there are scheduled times. It is true that in a large percentage of the meetings no one else comes other than those who would have come anyhow.

But we have never yet had anyone question the credibility or had any arm-twisting of any decision in the agency. They might have questioned the decisions, but none of them were arrived at by any wrong means.

Ms. ABZUG. Should we extend the definition of meetings to include those of less than a quorum of members, or with the staff of an agency?

Mr. SIMPSON. I think you should, yes.

I think you should include a requirement of advance notice and opening up of the meetings, meeting logs on all such meetings, in all of the regulatory agencies where there are meetings with outside parties, and where the agency employee has more than a minimal effect on the rule or regulation.

It is certainly true that in a lot of agencies the tail does wag the dog.

You are only talking about the top of it, and you will miss a lot of it.

Ms. ABZUG. I see. Mr. Moffett?

Mr. MOFFETT. On page 7 of your prepared testimony you mention that such implementation regarding the openness policy would thereby afford the public a more complete view of the Federal agency decision-making processes. How do you think that would come about? How would the public gain a more complete view?

Mr. SIMPSON. If all of your meetings, which are anywhere near significant and which go into agency final actions as part of the deliberative process, are open for not only public observation but public participation and public scrutiny, then I do not know how you can do any more.

Mr. MOFFETT. You are assuming that someone is going to be there, is that correct?

Mr. SIMPSON. We also keep meeting logs, and the logs are available to the public. You cannot twist arms and grab people off the street and bring them in, but if there is an inclination then there is the possibility to observe.

Mr. MOFFETT. Yes. What I am getting at is that while I certainly favor this concept and I know you do, that it is no panacea, is it?

Mr. SIMPSON. No, that is right.

Mr. MOFFETT. In fact, even by opening up these proceedings, we really do not go that much farther down the road, where the public will really have a grasp of what is going on, do we?

Mr. SIMPSON. There are a variety of other things you can do. You try to communicate in English. You make available in advance under the Freedom of Information policy, which goes along with this—I did gloss over that—but hand-in-hand is a very liberal interpretation of the Freedom of Information policy. I believe too many agencies regard it as a protection of information policy and focus on the means to protect information, rather than viewing it as one which says generally everything should be open to the public.

In our Freedom of Information policy we do not utilize the exemptions which are available under the law. By our Freedom of Information policy, which is also published, we say that the information will be available, and that that is the rule. The only exceptions we take are with respect to proprietary data and trade secrets which we must

keep confidential. Those which we may keep confidential, that is interagency memos and drafts of documents, we make all those available.

That opens up the process further.

Mr. MOFFETT. Yes. Let us take the constituents in my district, for example. Let us say that a good proportion of them are not interested in the day-to-day operations of your office, but your agency certainly does things that affect them.

Even by opening up—and I do favor it—and even by implementing the other measures you were talking about, we are still not getting the word out.

How will that word ultimately get out, and how will they have more access to it? By the press? Do you think the press will play an important role?

Mr. SIMPSON. Do you mean the fact that there are meetings they can attend?

Mr. MOFFETT. An AP reporter covers it, and so on.

Mr. SIMPSON. I would be glad to talk about some of the other means that we have taken to involve the consumers in our daily activities.

We have a consumer hotline. It is a toll-free hotline where people can call us and ask us what we are doing, and ask information.

We received last year about 100,000 telephone calls on that.

We probably receive, I would suspect, as many mail inquiries as most agencies around town. The public calendar, which lists the meetings, is available to anyone upon request. They are placed on a mailing list free. The mailing list is now something in excess of 10,000.

We have consumer volunteers. We have trained over 4,000 consumer volunteers to help us in enforcement, by doing retail surveillance.

We involve consumers on our standards writing panels, each one of them has about 15. And then we have meetings with the consumers.

Mr. MOFFETT. That is rare, is it not?

Mr. SIMPSON. Yes, it is rare.

Mr. MOFFETT. Do you think there should be some full-time presence for consumers on behalf of consumers in the other agencies?

Mr. SIMPSON. Are you talking about the Agency for Consumer Advocacy, or that kind of thing?

Mr. MOFFETT. Yes.

Mr. SIMPSON. I would oppose that. I have personally opposed the Agency for Consumer Protection, not because I do not think there is a problem. I believe there is a problem, but I believe the correct way to deal with the problem is by the kinds of measures that we have taken.

I have a concern that if you have an official consumer spokesman, then the average consumer is one layer further removed from the agency itself. I have an intellectual problem with the concept behind the legislation, because at least I view our agency as already having the mandate to insure the consumer's voice. If some Feds can do it, then I have difficulty finding out why other Feds cannot.

I think the correct approach is to open up the process and provide advance administrative information. I believe there is the inclination to take advantage of that opportunity. We find that to be true in our agency.

Mr. MOFFETT. You do not buy the empty chair argument, where the agency sits in a quasi-judicial position with one side being represented? For example, in the manufacturers of children's sleepwear on

one side on flammability standards, you do not favor someone putting forth opposing arguments; do you?

Mr. SIMPSON. I would favor them, but I have a question whether or not we should designate an official Fed to do that.

I think that the public themselves are better able to express their views.

Mr. MOFFETT. It does not happen.

Mr. SIMPSON. We do find them expressing their views. If you make the information available, and if you make the lines of communication open, you find that they come.

Mr. MOFFETT. What percentage of the administrative regulatory proceedings which are conducted downtown, do you suppose, have any kind of substantive intervention, or intervention at all, by other than the affected industries?

Mr. SIMPSON. If you are talking about legal intervention, most of the important decisions take place in informal processes. That is, for example, making the decisions on cost benefit tradeoffs. If you want the views of consumers you should go out and ask them what their views are.

That means more than just a selected few.

Mr. MOFFETT. Is there a consumer movement that you can relate to out there?

Mr. SIMPSON. We do.

Mr. MOFFETT. I do not think there is a consumer movement.

Mr. SIMPSON. We ask for volunteers who would like to sit and participate in our standards writing panel. This involves writing mandatory regulations. We have about 6,000 volunteers. These are citizens.

On the first four standards writing efforts, they actually sat on the panels and gave voluntarily of their time. As an agency, we paid their transportation and per diem. They sat for months and worked on these standards: On architectural glass, rotary power mowers, book matches, and swimming pool slides—writing mandatory standards.

We then called them back in. About 15 percent of this group was from consumer organizations and the balance were individual citizens—not affiliated.

We asked them if they thought their opinions were best expressed or adequately expressed through the organized groups. In general they said no. They would prefer to express their opinions themselves and were quite capable of doing so.

Mr. MOFFETT. Are they any match for the children's sleepwear manufacturers and their attorneys and the trade associations?

Mr. SIMPSON. There were MD's, engineers, economists, architects. We asked if they thought their participation was meaningful and was in the public interest, and were their views heard, and they said, yes. We called the industry together and got the same view. When they sat down—that is, both approached the problem with a lot of skepticism—and after the process was over they found that their views had been considered and it was helpful.

I do not think you would find that with an official Fed. I did not come up here today to talk about that. I agree there is a problem. There is a problem of not having a good consumer voice in the regulatory activities, but I do not think that is a solution to the problem. I think it is a panacea.

Mr. MOFFETT. Let me just conclude by saying that in my experience of several years of being involved with a full-time consumer group, we found that we were very rare. There were very few groups which had the expertise to go up against a manufacturer where there are many lobbyists, lawyers, and trade associations. I say this in a constructive fashion.

Let us not be naive about this. That takes an enormous amount of expertise, and it takes more than a full-time commitment.

It seems to me that we are being naive and creating an illusion of participation in a Federal agency. Don't misunderstand me, I appreciate the things that you have done. But we are creating an illusion of substantive participation, unless there is a dimension in a substantial way by a party which has expertise and is not tied to the other interests.

I think that many of the industries now are finding that constructive. They do their homework more, the agencies find it more helpful, the proceedings become more formal, rather than less formal, and I think that is good in many respects.

We started this discussion by saying that openness is not enough, and it seems to me that we need to combine that with some sort of full-time professional, yet independent, intervention.

I would like to believe that the consumer movement is a reality and more than a state of mind, and that in fact it can provide the kind of intervention which is needed. But I do not think it can, and in lieu of that, it seems to me that we ought to have something like that agency.

Mr. SIMPSON. Mr. Moffett, for 2 years we have been told that you would destroy Government if you opened up the meetings. I think they have found that such is not true. I think if you open up the process so that the average citizen, and those in organized groups, can in fact intervene themselves in the rulemaking, then they will do it. I suggest we try it.

Ms. ABZUG. Mr. Steiger?

Mr. STEIGER. I have just a word or two. I had a chance to read your statement, and it was a good one.

I am impressed also with your discussion with Mr. Moffett because I want you to know that there are many who share your views that to institutionalize the public concern has as great a depressing effect on those real concerns being developed as anything else.

It is just as difficult as denying the expression of public concern.

When you institutionalize public concern as a professional who must justify his concern, then I think you compound the problem rather than alleviate it.

I have a pragmatic problem. It is my understanding that right now one must file a notice for the Federal Register some 10 days in advance of the desire to publish it, because of the backlog. The Federal Register is that much overburdened.

I gather from your statement that you make it a practice to advertise, or to submit, notices of significant meetings in the Federal Register.

Mr. SIMPSON. We are required by law to notice some kinds of meetings and activities in the Federal Register, but we use, in addition, a public calendar which is developed by the agency itself in which we

list advance meetings. We are redundant on a listing of those meetings which go in the Federal Register. The Public Calendar is the principal vehicle. It is made available free to anyone who asks for it. We publicize the fact that it is available.

Additionally, we meet with the press. I believe that the press is a representative of the public, and it is a good way.

Mr. STEIGER. I hope you are wrong.

Mr. SIMPSON. I think that they are a public voice and a public critic, if you will. They are very skeptical of some of the things we do. At least they do help us publicize the fact that the Public Calendar is available and that meetings are open. We meet with them every Monday and answer all of their questions for the record, so at least we are open to them.

Of course you put yourself open to the misquote.

Mr. STEIGER. I am glad to have that clarification, because we have, in Ms. Abzug's legislation, a practical problem. That is, the requirement that we publish in the Federal Register. Not that the intent is not absolutely valid.

Is it possible in your experience in this field that one of the reasons for lack of consumer or public participation, is public apathy?

Mr. SIMPSON. I think there is that. I think there is the feeling that Government does not care anyhow. I think you must solicit—that is, actively solicit—the involvement of the public. You can do that by noticing that the meetings are open. You encourage the participation, and I think you will find plenty of people who want to help the Government in a constructive way.

Mr. STEIGER. Is that the thrust of this bill, that is, to encourage public participation?

Have you chanced to read the bill?

Mr. SIMPSON. I have read the bill but, as I mentioned before, it does not go far enough. It only deals with the meetings of the collegial bodies. I think it ought to deal with all of the staff, and those meetings with outside parties. That is where you get the arm twisting.

I think the bill goes to the thrust of improving the credibility of the governmental process.

Mr. STEIGER. Thank you.

Ms. ABZUG. One of the interesting problems that we have in preparing the legislation like this the exceptions and the exemptions. We went through this whole process in the Freedom of Information Act and the Privacy Act. I differ with the majority on some of that legislation, of which I was a coauthor. I thought the exemptions in both cases should have been more narrow.

Subsequent events have proved that to be correct, in my view.

There are a number of areas which probably do not affect you, but which affect other kinds of agencies in terms of our work. I am talking of blanket exemptions for agencies, which we should not have permitted.

We shall remedy that before this Congress is over. We have some legislation pending.

Mr. STEIGER. Maybe.

Ms. ABZUG. With the will of the majority, we will get things straightened out.

There are some exemptions in this bill, for example, invasion of privacy, that relate to your agency. Are the exemptions too many,

should they be narrower, should they be broader, should they deal with the problem differently?

You indicated in your opening remarks that you try and carry out our Freedom of Information Act, for example, to which we are having some very interesting responses by agencies of Government, as well as our new Privacy Act, over which this committee also has jurisdiction. That is, you indicated that you follow the rule that the information is to be available to the public and you only rarely invoke an exception or exemption.

Mr. SIMPSON. That is correct.

Ms. ABZUG. Should the exemptions relating to invasion of privacy and accusation of crime apply to cases where the subject of the meeting is the performance by a Government employee of his official duties?

Mr. SIMPSON. I would support that. That is a narrow one. If it is a false accusation, then it could be a real problem. I would go back to saying that, if the kind of meetings we deal with, we certainly protect the invasion of privacy. We do with proprietary data. We investigate the latest case law to determine what is proprietary and what is secret. We are liberal on that.

Then, any other meeting to be closed requires a majority vote of the Commission which is a feature which you have in your bill.

What I was saying is that on the Freedom of Information Act there are provisions for denying information in interagency memos. We make those available. The agency may take an exception, but by policy we do not take those unless it gets a majority vote.

It is the same kind of a thing that goes over to our meeting policy.

We even have open negotiations on legal cases; that is, consent orders. Those are open to the public and we have not found that that inhibits, because if there is ever to be a deal made that is the time, when you decide to accept something, and so those are open.

The initial meeting where it is an alleged possibility is closed, but all others, all serious meetings of negotiations of cases, are all open to the public.

We find a great deal of attendance also.

So that is a narrow exception which one could interpret for closing. It is in your bill.

Again, I think you have the problem of getting the legislation passed. I have indicated to you that I think the legislation falls short of the mark, so I would encourage you, if you must deal with the exemptions, to try it.

Ms. ABZUG. Should transcripts or minutes or recordings be made of open as well as closed meetings on the theory that some interested individuals might not learn of the meeting until after, with all due respects to your efforts to publicize?

Mr. SIMPSON. Yes, we do that.

We require meeting logs. We do have verbatim transcripts for some of the meetings, both open and closed. But we always require a meeting log, and the meeting logs are available to the public.

Under our Freedom of Information Act, in the Office of the Secretary, except as you have touched on in the bill where the Freedom of Information Act protects a meeting which deals with a bit of information that it must protect, which we do protect. We have meeting logs.

Ms. ABZUG. How do you determine when verbatim transcripts should be made?

Mr. SIMPSON. It depends on the significance and the size of the meeting.

It is a decision that is made really by the person who is chairing the meeting or hosting the meeting.

Ms. ABZUG. I do not know if you have carefully studied the bills, as there are some differences between them, or rather among them. Should the exemption relating to premature disclosure be dropped whenever the proposed agency action has become public, as proposed in H.R. 10315, or only where the agency itself has made the proposed action public as proposed in H.R. 9868?

Mr. SIMPSON. I think that is a provision that may deal more with the agencies dealing with financial disclosures, where there is an impact on the marketplace.

As the rulemaking process builds up to a decision by the Commission, then draft documents are available and the meetings of staff are open. There is no such thing as premature disclosure.

By the way, the meetings of our executive sessions are on Thursday. Immediately following the meetings our key staff is brought in and briefed. All decisions are immediately public if anyone asks, at that time, except for those where there is a requirement under law regarding invasion of privacy, et cetera.

Ms. ABZUG. Thank you, Mr. Simpson. We appreciate your coming before us. We will be in touch with you for additional information and guidance, and additional material, if you would like to submit it for the record.

It will be open into next week at least.

Mr. SIMPSON. Thank you.

Ms. ABZUG. Next we will have Commissioner Glen Robinson of the Federal Communications Commission.

[The witness was duly sworn.]

Ms. ABZUG. If you wish, you may insert your entire testimony in the record. You could proceed to summarize if you like. This will give us more time for questions.

Is that satisfactory?

Mr. ROBINSON. That is fine, Madam Chairwoman.

Ms. ABZUG. Without objection, so ordered.

STATEMENT OF GLEN ROBINSON, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. ROBINSON. Let me cut my remarks short. I support the legislation pending before this committee, requiring meetings of Government agencies to be open.

I have not gone over the legislation in line-by-line detail, but I would like to try to trace the implications of the legislation for the FCC or for agencies generally. Nevertheless I have looked at the bill with sufficient attention to be able to say that I think this is a good concept. I think it is on the right track. I have very few alterations to suggest.

I would like to make one point generally in support of Sunshine legislation. It is often said that legislation is necessary to build confidence in Government agencies. I am frank to say that I do not know whether it will have that effect or not. That does not concern me, whether it does or whether it does not build trust in Government.

It seems to me that what trust there may be should rest upon understanding, and if this promotes understanding and that understanding brings less trust, then that is in the public interest also.

I am frank to say that I do not know whether in any particular case the public will end up trusting us less or more, but they will have greater understanding and I am confident of that.

It is not a panacea, as was pointed out by Congressman Moffett. However, in the nature of things we do not deal with panaceas in Government, There are none for any problem that I know of. I think it is enough to say, and I think it can be said of these bills, that they offer marginal improvement in bringing better understanding to the processes of Government. For that reason I support it.

There are a variety of criticisms which have been advanced by the critics. There are adverse consequences which are thought to flow from Sunshine. I will not go into them in detail. I will simply cover all of them with the general statement that I think they are highly exaggerated, although I concede there are some possible adverse consequences which could happen in individual situations—such as grandstanding, perhaps some chilling of candid discussions. But, on balance, I am persuaded that those adverse consequences are not sufficient to offset the overriding benefits which come from opening up Government sessions.

At the same time, I do think that there ought to be some limitations. The bills recognize some limitations, and I think some of those limitations are appropriate. However, let me add one other qualification which does not appear to be in the legislation. I think it is not enough to recognize that there is a need for a confidentiality dealing with certain specified subject matters such as privacy, executive secrets, and the like. I think it is also important to recognize that, as a realistic matter, there are situations in which informal discussions take place among agency members, among agency members and staff, among staff and staff, and even with outside personnel. This applies to outside interests, be they industry or whatever. I do not think you can force all of those discussions, some of which are quite casual and spontaneous, into the framework of a formal public meeting. I do not think you can get into a situation where, if I see someone on the street or in my office and he comes to me to talk to me about some matter, that I have to say, "Halt, wait a minute, we cannot discuss it."

I have a different solution to the problem of secrecy which I will come to in a minute—it involves logging and disclosure requirements for ex parte contacts. Suffice it to say now that my preference would be to limit the application of open meetings simply to those meetings which are either publicly scheduled or are for the purpose of taking official action, or which in fact result in agency action.

I recognize at once, of course, that this could create a possibly broad exemption to the rule. The legislative purpose could be evaded by creating too large an exemption. All I can say is that if agency officials are going to evade it, then there is almost nothing that legislation can do to stop it. They will find a way. It will be done. I think the point is to try to enlist as much as possible the voluntary acceptance and coordination—an acceptance of the spirit of the legislation, and the one way of doing this is to provide some degree of flexibility.

Let me quickly turn to the portions dealing with ex parte contacts. I will not go into the legislation here dealing with ex parte contacts except to note that it is very desirable. I applaud it and support it. I would note only that it pretty much tracks existing regulations, not only in the FCC, but for other regulatory agencies. Nevertheless, I think it is appropriate to put in the legislation.

On the subject of ex parte contacts I would like to make one further observation. I think that there ought to be a further step taken. I think we ought to require some type of logging and public record of ex parte contacts. The bills, of course, deal with improper ex parte contacts. They quite correctly attempt to regulate, restrict, and forbid all such ex parte contacts. But there are a lot of legitimate ex parte contacts that do not relate to pending adjudicatory matters or restricted proceedings, and these should not be foreclosed. But, I see no particular reason why the fact of such ex parte contacts and some kind of summary of their content could not be logged and put in some form of public record. I testified earlier this year before Senator Kennedy's Subcommittee on Administrative Practices and Procedures in support of S. 1289, which would impose such logging disclosure requirements. If the committee is interested I can later submit that.

Ms. ABZUG. Without objection, that material will be submitted and inserted in the record.

[The material follows:]

STATEMENT OF GLEN O. ROBINSON BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE OF THE SENATE JUDICIARY COMMITTEE ON S. 1289 (APRIL 14, 1975)

Mr. Chairman and members of the Committee, I am pleased to appear here today to testify on S.1289. I should point out that I do not appear in an official capacity as a representative of the FCC. My views are entirely personal and they do not reflect official views of the FCC, nor do they necessarily reflect the views of any of my colleagues at the FCC.

I am still new to Washington bureaucracy, having been appointed to the FCC in June of last year. In light of this brief experience on the Commission, I would feel somewhat diffident about offering this Committee my opinion on S.1289 but for the fact that I have had some practical and academic experience in the field of administrative law. From 1961 to 1967, I practiced law in Washington, primarily in the field of administrative law (including several years work in communications law). From 1967 to 1974, I taught at the University of Minnesota, principally in the field of administrative law and regulated industries.

Based on this past as well as current experience, I support the essential concept of S.1289 insofar as it requires the maintenance of public records of informal communications between agency officials and outside parties pertaining to substantive agency policy matters. I doubt that reporting and disclosure requirements will, in themselves, radically transform the character of administrative decision-making or quality of administrative policy. I nevertheless do believe

that they can have some salutary effect not only in bringing private influences into public vision, but also in enhancing the credibility and the integrity of administrative government at a time when it seems to be at an all-time low.

I am aware that not all agency officials and observers agree with this appraisal. I have heard the concern expressed not specifically in connection with this legislation but in the more general context of "sunshine" and public disclosure laws, that opening agency meetings and communications with agency officials to public inspection would discourage candid communications between the agency officials and outside individuals and groups--either industry or nonindustry. I do not think we need be concerned about this possible effect. It is important to permit private contacts between agency officials and outside individuals or groups except on matters that are within the perview of "restricted proceedings" (i.e., those in which, under the APA or agency rules, all communications of substantive matters must be made on a record); such contacts are a useful source of information and ideas for the agency. However, I see no good reason why either the <u>fact</u> of such communications, or their <u>general</u> character, needs to be private and secret--at least as a general rule. To the extent disclosure might "chill" such communications and contacts, I would not regard the lost contact as worth troubling about. (I should add parenthetically that I cannot recall any conversations or contacts, written or oral, which I have

had with any outside person or group in the nine months of my tenure on the Commission that were of such a confidential character that they would not have taken place had reporting and disclosure requirements such as those specified in S. 1289 been in effect.)

Possible "chilling effects" aside, the other argument that is sometimes raised against reporting and disclosure is that it would constitute an administrative burden which would cost more than the benefit derived from it. In general, I am unpersuaded by the burden argument; I see very little burden in a simple requirement for reporting and disclosure of ex parte*/ written or oral communications to agency officials on matters related to substantive policy. Such burden as there is would, in my opinion, be offset by the benefits which I have mentioned.

Although I support the concept of reporting and disclosure of ex parte contacts, and the general thrust of S. 1289, I do have some trouble with certain features of the bill and I would like to suggest some changes in it.

First, imposing the reporting requirement on all agency employees in grade GS-15 or above may be both too broad and too narrow, depending on the particular agency and office involved. I am aware that defining the requirement in terms of civil service grades allows for a uniformity that is simple to apply across different agencies. But the simplicity is deceptive, for persons in the same grade may have greatly different responsibilities in different agencies and in different offices. What is wanted is to reach the

*/ I use the term "ex parte" in the general sense given it by FCC rules, to mean: on behalf of one person without advance notice to other interested persons (including the public) and opportunity for such persons to be present.

major decision and policy makers--those that have significant discretion. In some offices an official at that level may have only minor discretion, while in others substantial discretion may be vested in employees of lesser grade. I would limit the requirement to agency members, and their staffs, and then require that the agency promulgate regulations to implement the requirement further for the agency's staff. In this way, there can be a uniformity as to the basic requirement but some flexibility within each agency.

Second, there is, I think, a problem with respect to what is subject to reporting. The bill seems to impose what I would regard as onerous and unnecessary requirements for reports with respect to receipt of routine, publicly filed documents. For example, at the FCC we generally receive an original and 14 copies of each pleading, brief, petition or other formal document filed; each Commissioner receives one copy. I read few of such formal documents as they come in; if I carefully perused each one, I would be able to do very little else. Some--very few--of the documents I keep for my own files for further reference when the matter comes before the Commission (which is generally months, and may indeed be years, after the filings are first made). A copy of these documents goes directly into the Commission's public files where it is, of course, available to anyone. For such documents, I believe no more should be required. However, Section 560(b)(1) and (2) seem literally to say that because I receive copies of such formal filings I would have to prepare a

record--as prescribed by 560(a). Indeed, every Commissioner and every other "agency official" would have to make such a record, of the same documents, under a literal reading of S.1289. I trust that such a requirement is not intended, for it would not only be quite pointless (the documents being in the public files anyway), it would be quite literally a mind-numbing burden for every "agency official" to record even minimal information pertinent to the mountains of publicly filed materials which we receive each week. Accordingly, I would modify 560(b)(1) and (2) to make clear that the reporting requirement does not apply to documents which are formally filed with the agency and are maintained in the agency's public files.

Let me also suggest one further modification to take care of another related difficulty. Agency members receive a considerable volume of mail that, though personally addressed, is in the nature of a public filing, complaint, or inquiry, even though it may not be filed as a formal document in accordance with our rules. Commonly, these are forwarded to the staff for appropriate disposition (they may or may not call for a reply). Where this is done, I see no point in logging these twice, once in my office and once in the bureau office.

Third, I have some difficulty with Section 560(a)(7)(F). I am not quite sure what is encompassed within the phrase "action taken in response," but if it is broadly construed it could get to be rather complicated. Let me give an example, which, as it happens, is both real and current. Suppose that the Commission is deliberating on a rulemaking or petition for rulemaking to consider rules restricting

ten watt noncommercial FM stations, and representatives of higher powered noncommercial public FM stations come to see me to urge my active support for the rules. I express to them an interest in the matter. Later, I talk to a person at the staff level who is working on the problem, inquiring as to its present status; I also express the hope that we will be able to do something about the problem of preemption of the FM noncommercial frequencies by ten watt stations. Later still, my engineering assistant has a similar contact. And so on. Now, is all that reportable? Note that any written correspondence with the staff would presumably be exempt from disclosure under the 5 U.S.C. Section 552(b): is it then sensible to require reports of oral discussions? Congress could, of course, simply override the exemption under the Freedom of Information Act for internal agency communications in this instance, but I question whether this is wise policy. Even if the confidentiality issue is set to one side, however, the reporting requirement in this instance still raises difficulty. If "in response" to an outside contact such as that which I just mentioned, I made repeated further inquiries of the staff, when would the reporting end? Bear in mind that inquiries of this kind could be made many times over a period of months. I think that to record every such contact would impose a burden out of proportion to the very minor benefits to be derived from Section 560(a)(7)(F).

Finally, there is one relatively small point that should perhaps be made clear in the bill: that the legislation is not intended to change the current rules restricting ex parte communications. It

is, of course, obvious from the very character of the bill that it is not intended to prohibit all ex parte contacts, but it is perhaps less obvious that it is not intended to sanction all such contacts either. In short, the bill presupposes that the contacts are, under existing law (the APA or pertinent agency rules), lawful, and I think it may be well to make clear that the reporting and disclosure requirements are not intended to change any of the existing structures on such ex parte communications.

Mr. Chairman, at this point, inasmuch as over half of my statement discusses some of the difficulties with this bill, I think it is appropriate for me to reiterate what I stated at the outset: the reporting and disclosure concept reflected in S.1289 is a good one and should be adopted. The criticisms which I have made of particular parts of the bill are offered entirely with the constructive purpose of strengthening this otherwise sound measure. To this same end, any further assistance I can provide I will be most willing to offer.

Mr. ROBINSON. That concludes my testimony. I appreciate the invitation to submit my comments. I will be happy to answer any questions.

Ms. ABZUG. How do you answer the testimony that was made by the previous witness who proposes that all levels of meetings and all levels of participation be open? I think that lots of the decisionmaking for administrators and commissions takes place at the staff level.

How do you reconcile a position of believing in the openness of the operation and decisionmaking of the agency with your position that only certain levels of meetings should be open?

Mr. ROBINSON. I think my solution to that is that all such meetings should be logged and their contents disclosed. I do not know how things work in Mr. Simpson's agency, but in a bureaucracy the size of the FCC and the kinds of contacts we have with our regulatees, which run the gamut from common carrier regulatees, to broadcast and other licensees, I think that we would find it hard to function.

If every time someone on the staff held any kind of conversation with somebody outside, he had to have advance public notice, then he could not get anything done. We could not call on the phone or anything. There is an informal exchange of information which we require for the conduct of our business. Very little of the business we do is adjudication. Most of it is routine administration. I sympathize with the thought, but I just do not have any practical way of making it applicable, except by logging and disclosure which I think would more than adequately fill the bill. By the way, I think it also is true that if the meetings before the membership itself are open, then a lot of the influences, such as they may be, would impinge on the staff and would be revealed. Sources of information can be revealed.

But I do not put great weight on that policy. I do not think there is any great secret about who talks to whom. In our agency I think we pretty well know. I think the people who watch our agency know pretty well. My concern is to get that out broadly to the public. Then, if they have suspicions to raise about the contacts, by all means they should come to the Commission or to Congress, or the courts, and say something about it. I have a feeling that most of the staff contacts, which Mr. Simpson talked about, are rather innocuous and I would hesitate to force all of those into the open.

Ms. ABZUG. You seem to narrow your preference to the application of openness to the meetings you indicate, which are publicly scheduled, or for the purpose of taking official agency action, or result in official agency action.

That is usually after the fact. There is no real decisionmaking process at that point.

Mr. ROBINSON. My only concern is of a practical nature. We deal with a lot of things that come up rather at the last minute. I would hate to think——

Ms. ABZUG. I do not want to get into it in detail, but we are going to have the Commission down here later. We are concerned about many of the problems in the functioning of the Commission, informational grounds as well as others. We feel that there has become a narrowing of public participation. I just thought you might know that. But since you came by, I thought I would register a small complaint now.

We have been receiving many complaints, and we have been visited by public groups who are interested in broadcasting and communication. We are determining what would be the most useful approach in terms of the various committee jurisdictions in the House.

I think it is possible that some of the rulemaking and the decision-making which is taking place in the Commission would be different if it had an open process earlier than the stage at which you are recommending it.

Mr. ROBINSON. That is quite possible. I do not have any great emotional concern about opening up all meetings. I just say that there are many occasions when, say, four members of us meet in rather casual circumstances to discuss some matter of concern—sometimes the staff will be there and sometimes not—and I am a little reluctant to have to go and give public notice and have the public come in every time I want to have such a conversation. I suppose, however, it could be done.

Ms. ABZUG. I have to interrupt you.

You have made some very significant decisions recently. You practically killed, in the opinion of some of us, the fairness, or rather the equal-time doctrine. You eliminated agreements between citizens and broadcasters. There were lots of questions about the ascertainment policy. A lot of these decisions were made without any kind of public opportunity to hear the process of coming to the decisions. This is what concerns me about your testimony here today. At this point, I include a relevant news item.

[The article follows:]

[From the Washington Star, Oct. 10, 1975]

SECRECY AND THE FCC: ISSUE CLOSED

(By Stephen M. Aug)

The Federal Communications Commission has voted formally in closed session to keep its meetings closed to the public.

In fact, the meeting at which the commissioners voted was even closed to most of the commission staff members who usually attend such meetings, according to some who often attend.

The commissioners were considering the matter at the specific request of Rep. Torbert H. Macdonald, D-Mass., chairman of a House Commerce communications subcommittee which has jurisdiction over the FCC. Macdonald was notified of the FCC's 5–2 vote on the question of open meetings by letter.

Only one federal regulatory commission regularly holds open meetings, the Consumer Product Safety Commission, which is also the newest of the agencies.

Macdonald told a reporter last evening that the commission's letter to him was "an insult to my intelligence."

He contended he had asked the FCC to do only that which most congressional committees already do in marking up legislation—hold such sessions in public.

"I find their decision repugnant," Macdonald said, pointing out that the commission had also refused to allow his subcommittee staff counsel, Harry Shooshan, attend meetings. He said FCC Chairman Richard E. Wiley has apparently forgotten that regulatory agencies are arms of Congress.

"I'm just getting fed up with them paying no attention to the Congress," Macdonald added. Macdonald has sponsored legislation that would force the FCC to open its meetings to the public and make other procedural changes to give the public greater access to the agency's deliberation.

In a letter to Macdonald, Wiley wrote that "a majority of commission members expressed concern that public meetings might have an inhibiting effect on the free and candid discussion which has traditionally characterized FCC agenda meetings. It is felt that uninhibited discussion between and among agency members and their staffs is an essential prerequisite to informed and intelligent decision-making."

In fact, there are several pieces of legislation pending that would require more sunshine on regulatory agency meetings—including one by Sen. Lawton H. Chiles, D-Fla., that would open up sessions of all regulatory agencies.

Wiley said also he hopes any legislation that Congress approves on the subject deals with all regulatory agencies. And he urged exemptions for "chance encounters" and brainstorming sessions of agency members and their staffs.

In an interview last night, Wiley pointed out that the commissioners were not absolutely opposed to open meetings. "I don't think the commission was necessarily opposed to the concept," he said, adding that the commission majority was concerned about the effect of such sessions on free debate—and that they felt strongly about freedom of the agency's staff to give advice to the commissioners candidly.

The two commissioners voting in favor of opening the commission meeting were Benjamin Hooks and Glen O. Robinson, both Democrats. The third Democrat at the agency, James H. Quello, voted with the four Republican members against open meetings.

Mr. ROBINSON. I assume that our deliberations on 315—not, by the way, the Fairness Doctrine, for we have done nothing with the Fairness Doctrine recently—would be open. I never assumed anything to the contrary. I would have been perfectly happy to have had everybody packed into that little room in which we had all this agonizing going on back and forth between two competing bureaus. We sat for hours. It would not have made any difference to me. I was not thinking of closing up anything like that. Quite frankly, it probably would have saved us some pain. I indicate in my testimony that I am, in fact, almost alone on this, however.

Ms. ABZUG. So, I am probably being very hard on you.

Mr. ROBINSON. That is OK. I think probably we would have been spared some unnecessary grief if the public had been there. I think more often than not the suspicions are darker than is justified. I would have no desire to close off those deliberations.

Mr. STEIGER. They would not have been under his definition.

Mr. ROBINSON. That is correct; they would not.

Ms. ABZUG. I think you are right that there is a whole process in reaching a decision. Very often I find, in dealing with the bureaucracy, that if there had been an opportunity for people who are interested in those areas to have had greater access, there might have resulted in a more constructive response. Sometimes it is difficult to undo a change, even though the agency itself, when confronted with the response, would like to have had the opportunity to have made a different decision. The process of undoing it is difficult.

There is a difference in the way we conduct our hearings in the sense that the issues which we used to talk about behind closed-doors, in a number of committees in which I have participated, are now discussed in the open. In a certain sense we get a bigger pro and con and it helps us in our ultimate decisionmaking.

Mr. ROBINSON. I should point out that some of the examples you mention, without getting into the merits of them, did have quite active public involvement. The ascertainment thing for example. The only thing the public was really not in on—that is, public interest groups and the whole bunch of them—was the final voting. It was almost all over by that point. We do get quite widespread comment frequently from groups of this sort.

Ms. ABZUG. What about the Fairness Doctrine? Is there much discussion of that? I mean in public. I know the public is concerned about it.